

[No. 26]

**SUBCOMMITTEE NO. 1 CONSIDERATION OF H.R. 7216, TO AMEND THE
CENTRAL INTELLIGENCE AGENCY ACT OF 1949, AS AMENDED,
AND FOR OTHER PURPOSES**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,
Washington, D.C., Tuesday, July 23, 1963.

The subcommittee met at 10 a.m., Hon. L. Mendel Rivers, chairman of the subcommittee, presiding.

Mr. RIVERS. Let the committee come to order

Mr. McCone has another very important engagement, and he asked that after his statement he be excused. And, of course, we want to accommodate him. And he is late now. So I will ask the committee to come to order, and let us begin the hearings on this very important piece of legislation.

Members of the committee, we are meeting this morning to begin hearings on H.R. 7216, a bill to amend the Central Intelligence Agency Act of 1949. Mr. McCone and General Carter are here to testify in support of this bill.

Gentlemen, we are very pleased to have you here, Mr. McCone, with the members of your staff, and I am sure that this will be an enlightening session for all of us.

Now, this looks like a very complicated bill. Actually, almost all of the provisions currently exist as law applying to executive agencies. The first part of the bill contains technical amendments to bring the CIA Act up to date on such things as travel and medical benefits. It also contains a proposed new section authorizing the Agency to receive gifts from individuals and business organizations.

However, by and large, the main purpose of this bill is to authorize CIA to establish a special retirement system for a limited number of their employees and we will go into that part first. The system is identical, or almost identical, to the retirement system of the Foreign Service and I am advised that it does not provide anything new.

I will not ask Mr. McCone to discuss all of this at this time. Mr. McCone will present a general statement on this bill and answer a few general questions. Then, because much of the specific discussion will involve classified information, of course we will have to go into executive session.

Mr. McCone, I would like to ask you and your people as they testify on the retirement system to point out anything that is different from the Foreign Service system. This committee has jurisdiction over CIA but it is not expert in the Foreign Service retirement system which, as it stands today, is the result of some 40 years' of experience.

(5783)

5784

Since it is proposed to adopt this system, I want to be sure that any changes are reviewed by the committee.

I would like to say that in my opinion we should not adopt the section in the retirement title which allows additional credit for duty at unhealthful posts. This is section 253. We repealed this authority for military personnel years ago and I don't believe it should be re-instituted for a quasi-military organization such as the CIA.

In discussing the retirement provisions, I will ask the witnesses to give us full information on the crediting of prior military service for CIA retirement purposes. In the nature of things, CIA can be expected, particularly if the dual compensation and dual employment laws are revised, to look to former or retired military personnel as prospective employees.

However, I could also emphasize that none of us here are as familiar with the Foreign Service retirement system as we are with the military retirement system. Thus we will want to know, in particular, any parts of the bill that would give the CIA any benefits or advantages that do not now exist for Foreign Service employees.

In addition, we will expect a full explanation as to how the CIA plans to utilize the forced attrition authority contained in section 234(c).

We also should receive a full explanation as to any retroactive benefits or application of the proposal, and, finally, full information concerning future costs.

(H.R. 7216 is as follows:)

[H.R. 7216, 88th Cong., 1st sess.]

A BILL To amend the Central Intelligence Agency Act of 1949, as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Act Amendments of 1963".

SEC. 2. The Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403 (a) et seq.), is further amended as follows:

(1) Amend section 3 by deletion of subsections (a) and (b) and substitute therefor:

"(a) In the performance of its functions, the Agency is authorized to exercise the authorities contained in sections 2301; 2302 (2) and (3); 2303 (b) and (c); 2304(a) (1), (2), (3), (4), (5), (6), (10), (12), (15), and (17); 2305; 2306; 2307; 2312; and 2383 of title 10, United States Code.

"(b) In the exercise of the authorities granted in subsection (a) of this section, the term 'Agency head' shall mean the Director and the Deputy Director."

(2) Amend section 3(d) by deletion of the wording "section 2(c) and section 5(a) of the Armed Services Procurement Act of 1947" from the first sentence and substitute therefor, "section 2304(a) and section 2307 of title 10, United States Code." Further amend section 3(d) by deletion of the wording "section 2(c), by section 4 or by section 5(a) of the Armed Services Procurement Act of 1947" from the second sentence and substitute therefor, "section 2304(a), by section 2306 or by section 2307 of title 10, United States Code".

(3) Amend section 4 by adding the following new paragraphs (1)(G) and (1)(H), and (8), and further amend section 4 by deletion of the words "Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to duty stations outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, shall—" and substitute therefor, "Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned abroad to duty stations outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, may—".

5785

"(1)(G) Pay the travel expenses of officers and employees of the Agency and members of their families, while serving at posts specifically designated by the Director for purposes of this paragraph, for rest and recuperation to other locations abroad having different environmental conditions than those at the post at which such officers and employees are serving, provided that such travel expenses shall be limited to the cost for each officer or employee and members of his family of one round trip during any continuous two-year tour unbroken by home leave and two round trips during any continuous three-year tour unbroken by home leave;

"(1)(H) Pay the travel expenses of members of the family accompanying, preceding, or following an officer or employee if, while he is en route to his post of assignment, he is ordered temporarily for orientation and training or is given other temporary duty."

"(8) Provide appropriate orientation and language training to members of family of officers and employees of the Agency in anticipation of the assignment abroad of such officers and employees, or while abroad."

(4) Amend section 4(3)(A) to read as follows:

"(3)(A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence authorized in section 203(f) of the Annual and Sick Leave Act of 1951, as amended, each officer or employee of the Agency who was a resident of the United States (as described above) at the time of employment, upon completion of three years' continuous service abroad or as soon as possible thereafter and may so order after completion of eighteen months such service without regard to the limitation contained in section 203(f) of the Annual and Sick Leave Act of 1951, as amended."

(5) Amend section 4(5) by striking out subsections (A) and (C) and inserting in lieu thereof the following new paragraphs (A) and (C):

"(A) In the event an officer or employee of the Agency or one of his dependents, requires medical care, for illness or injury not the result of vicious habits, intemperance, or misconduct, while on assignment abroad in a locality where there is no qualified person or facility to provide such care, pay the travel expenses of such officer, employee, or dependent by whatever means deemed appropriate by the Agency, including the furnishing of transportation, and without regard to the Standardized Government Travel Regulations and section 10 of the Act of March 3, 1933, as amended (60 Stat. 808; 5 U.S.C. 73b), to the nearest locality where suitable medical care can be obtained and on his recovery pay for the travel expenses of his return to his post of duty. If any such person is too ill to travel unattended, or in the case of a dependent too young to travel alone, the Agency may also pay the round-trip travel expenses of an attendant or attendants;".

"(C)(i) In the event of illness or injury requiring hospitalization or similar treatment incurred by an officer or employee of the Agency who is assigned abroad, not the result of vicious habits, intemperance, or misconduct on his part, pay for the cost of treatment of such illness or injury;

"(ii) In the event a dependent of an officer or employee of the Agency who is assigned abroad, incurs an illness or injury while such dependent is located abroad, which requires hospitalization or similar treatment, and which is not the result of vicious habits, intemperance, or misconduct on his part, pay for that portion of the cost of treatment of each such illness or injury that exceeds \$35 up to a maximum limitation of one hundred and twenty days of treatment for each such illness or injury, except that such maximum limitation shall not apply whenever the Agency, on the basis of professional medical advice, shall determine that such illness or injury clearly is caused by the fact that such dependent is or has been located abroad;".

(6) In section 5, add the following new paragraphs (g) and (h):

"(g) Upon the termination of the assignment of an employee appointed from another Government agency without a break in service for duty with the Agency for a specific period of time agreed upon by both agencies, such person will be entitled to reemployment in such other Government agency in the position occupied at the time of assignment, or in a position of comparable salary, or, at the volition of the other Government agency, to a position of higher salary. Upon reemployment, the employee shall receive the within-grade salary advancements and other salary adjustments he would have been entitled to receive had he remained in the position in which he was employed prior to assignment to the Agency.

5786

"(h) Settle and pay, whenever the Director determines that payment will further the purposes of this Act, without regard to any other provisions of law and under such regulations as the Director may prescribe, in an amount not exceeding \$10,000, any claim against the United States for loss of or damage to real or personal property (including loss of occupancy or use thereof), belonging to, or for personal injury or death of, any person not a citizen or resident of the United States, where such claim arises abroad out of the act or omission of any Agency employee or out of the act or omission of any person acting on behalf of the Agency but only if such claim is presented in writing to the Agency activity involved within one year after it accrues."

(7) Paragraph (4) of section 104(a) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) (relating to the exclusion from gross income of compensation for injuries and sickness) is hereby amended to read as follows:

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021), or as a disability annuity payable under title II of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403(a) et seq.)."

(8) Renumber section 7 to read section 8. Renumber section 8 to read section 9, APPROPRIATIONS. Renumber section 9 to read section 10, SEPARABILITY OF PROVISIONS. Renumber section 10 to read section 11, SHORT TITLE. Add a new section 7 as follows:

"7. (a) For the benefit of or for use in connection with the Agency or for the benefit or welfare of employees of the Agency or their dependents, the Director is authorized, notwithstanding any other provisions of law—

"(1) to receive gifts to the Agency and in his discretion to accept, receive, hold, administer, and expend or dispose of such gifts and bequests of property from individuals or others;

"(2) to disburse gifts, bequests of money, interest, profits, income, or proceeds from sales of other property received as gifts in accordance with the terms and conditions of the acceptance of any particular gift or bequest;

"(3) to invest, reinvest or retain investments of the money, property or securities and the interest, profits, or proceeds accruing from such money, property or securities;

Provided, however, That the Director is not authorized, as a consequence of gifts or bequests of money, property, or securities to the Agency, to engage in any business or to exercise any voting privilege which may be incidental to securities in his hands received as a gift to the Agency, nor shall the Director make any investments other than securities of the United States or other securities guaranteed as to principal and interest by the United States, except that he may make any investments directly authorized by the instrument of gift, and may retain any investments accepted by him; *Provided further,* That gifts, bequests of money, or proceeds from other property are not utilized for the conduct of activities by the Agency, as authorized in 50 U.S.C. 403(d) et seq. through the augmentation or in lieu of appropriations by the United States Congress; *And provided further,* That the funds represented by the gifts, bequests of money, or proceeds from other property are not commingled with funds appropriated by the United States Congress.

"(b) For the purpose of Federal income, estate, and gift taxes, gifts and bequests accepted by the Director shall be deemed to be a gift or bequest to or for the use of the United States."

SEC. 3. Insert the heading "TITLE I—DEFINITIONS AND GENERAL AUTHORITIES" before the section title, "DEFINITIONS", of section 1 of the Central Intelligence Agency Act of 1949, as amended.

SEC. 4. The Central Intelligence Agency Act of 1949, as amended, is further amended by the addition of title II as follows:

"TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

"PART A—ESTABLISHMENT OF SYSTEM

"RULES AND REGULATIONS

"SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency retirement and disability system, referred to hereafter as the system.

5787

"(b) The Director shall administer the system in accordance with such rules and regulations and with the principles established by this Act.

"ESTABLISHMENT AND MAINTENANCE OF FUND

"SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency retirement and disability fund which shall be maintained by the Director. The Central Intelligence Agency retirement and disability fund is referred to hereafter in this title as the fund.

"PARTICIPANTS

"SEC. 203. The Director may designate from time to time such Agency officers and employees, hereafter referred to as participants, who shall be entitled to the benefits of the system.

"ANNUITANTS

"SEC. 204. (a) Annuitants shall be persons who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, dependent widowers, children, and beneficiaries of participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

"(b) When used in this title the term—

"(1) 'Widow' means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or is the mother of issue by such marriage.

"(2) 'Dependent widower' means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by such marriage, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

"(3) 'Child' means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before age eighteen, is incapable of self-support. In addition to the offspring of the participant and his or her spouse, the term includes (a) an adopted child, and (b) a stepchild or recognized natural child who received more than one-half of his support from the participant.

"PART B—COMPULSORY CONTRIBUTIONS

"SEC. 211. (a) Six and one-half per centum of the basic salary received by each participant shall be contributed to the fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Agency to the credit of the fund.

"(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

"PART C—COMPUTATION OF ANNUITIES

"SEC. 221. (a) The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest five consecutive years of service, for which full contributions have been made to the fund, multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 251, 252, and 253. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted.

"(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband, commencing on the date following such participant's death and terminating upon the death of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph

5788

(a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2½ per centum of any amount up to \$2,400 he specifies as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

"(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) 40 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$600; or (iii) \$1,800 divided by the number of children.

"(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) 50 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$720; or (iii) \$2,160 divided by the number of children.

"(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant.

"(e) The annuity payable to a child under paragraph (c) or (d) of this section shall begin on the first day of the next month after the participant dies and such annuity or any right thereto shall be terminated upon death, marriage, or attainment of the age of eighteen years, except that, if a child is incapable of self-support by reasons of mental or physical disability, the annuity shall be terminated only when such child dies, marries, or recovers from such disability.

"(f) At the time of retirement an unmarried participant may elect to receive a reduced annuity and to provide for an annuity equal to 50 per centum of the reduced annuity payable after his or her death to a beneficiary whose name shall be designated in writing to the Director. The annuity payable to a participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the retiring participant, but such total reduction shall not exceed 40 per centum. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as prescribed by the Director. The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.

"PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

"RETIREMENT FOR DISABILITY OR INCAPACITY—PHYSICAL EXAMINATION—RECOVERY

"SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a)(2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the Director, be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his grade in the Agency.

"(b) In each case, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade in the Agency. If the

5789

Director determines, on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

"(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered to have been separated within the meaning of section 234 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241 (a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions.

"(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself under the Federal Employees' Compensation Act of September 7, 1916, as amended, covering the same period of time. This provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period of time. Neither this provision nor any provision of the said Act of September 7, 1916, as amended, shall be so construed as to deny the right of any person to receive an annuity under this Act by reason of his own services and to receive concurrently any payment under such Act of September 7, 1916, as amended, by reason of the death of any other person.

"(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 14 of the Federal Employees' Compensation Act of September 7, 1916, as amended, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal employees' compensation fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such computed payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

"DEATH IN SERVICE

"SEC. 232. (a) In case a participant dies and no claim for annuity is payable under the provisions of this Act, his contributions to the fund, with interest at the rates prescribed in sections 241 (a) and 281 (a), shall be paid in the order of precedence shown in section 241 (b).

"(b) If a participant, who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252 (a) (2), dies before separation or retirement from the Agency and is survived by a widow or a dependent widower, as defined in section 204, such widow or dependent widower shall be entitled to an annuity equal to 50 per centum of the annuity computed in accordance with the provisions of paragraph (e) of this section and of section 221 (a). The annuity of such widow or dependent widower shall commence on the date following death of the participant and shall terminate upon death of the widow

5790

or dependent widower, or upon the dependent widower's becoming capable of self-support.

"(c) If a participant who has at least five years of service credit toward retirement under the system excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(1). The child's annuity shall begin and be terminated in accordance with the provisions of section 221(c). Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though such wife or husband or child had not survived the participant.

"(d) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(2). The child's annuity shall begin and terminate in accordance with the provisions of section 221(e). Upon termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though that child had never been entitled to the benefit.

"(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the system, the annuities payable in accordance with paragraph (b) of this section shall be computed in accordance with the provisions of section 221 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this provision shall in no case exceed the difference between his or her age on the date of death and the mandatory retirement age applicable to his or her grade in the Agency. In all cases arising under paragraphs (b), (c), (d), or (e) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of his death.

"VOLUNTARY RETIREMENT

"Sec. 233. Any participant in the system who is at least fifty years of age and has rendered twenty years of service, including service within the meaning of section 253, may on his own application and with the consent of the Director be retired from the Agency and receive benefits in accordance with the provisions of section 221.

"DISCONTINUED SERVICE RETIREMENT

"Sec. 234. (a) Any participant who separates from the Agency after obtaining at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), may, upon separation from the Agency or at any time prior to becoming eligible for an annuity, elect to have his contributions to the fund returned to him in accordance with the provisions of section 241, or (except in cases where the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States) to leave his contributions in the fund and receive an annuity, computed as prescribed in section 221, commencing at the age of sixty years.

"(b) If a participant who has qualified in accordance with the provisions of sections 241 and 281.

"(c) The Director may in his discretion retire participants in grade GS-14 and above to promote the efficiency of the Agency and they shall receive retirement benefits in accordance with the provisions of section 221.

"(d) The Director may in his discretion retire participants in grade GS-13 and below to promote the efficiency of the Agency and each such officer shall receive—

"(1) one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then current salary rate, payable without interest, from the fund, in three equal installments on the 1st day of January following the officer's retirement and on the two anniversaries of this date immediately following: *Provided*, That in special

5791

cases, the Director may in his discretion accelerate or combine the installments; and

"(2) a refund of the contributions made to the fund, with interest as provided in section 241(a), except that in lieu of such refund such officer, if he has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a), may elect to receive retirement benefits on reaching the age of sixty in accordance with the provisions of section 221. In the event that an officer who was separated from grade GS-13 or GS-12 and who has elected to receive retirement benefits dies before reaching the age of sixty, his death shall be considered a death in service within the meaning of section 232. In the event that an officer who was separated from grade GS-11 or below and who has elected to receive retirement benefits dies before reaching the age of sixty, the total amount of his contributions made to the fund, with interest as provided in section 241(a), shall be paid in accordance with the provisions of section 241(b).

"(c) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended (31 U.S.C. 203) or the provisions of any other law, an Agency officer who is retired in accordance with the provisions of section 234(d) shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (d) (1) of this section.

"MANDATORY RETIREMENT FOR AGE

"SEC. 235. (a) Any participant in the system is grade GS-18 or above, shall upon reaching the age of sixty-five be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years.

"(b) Any participant in the system, other than in grade GS-18 or above, shall upon reaching the age of sixty, be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years.

"PART E—DISPOSITION OF CONTRIBUTIONS AND INTEREST IN EXCESS OF BENEFITS RECEIVED

"SEC. 241. (a) Whenever a participant becomes separated from the Agency without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the total amount of contributions from his salary with interest thereon at 4 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of separation including all contributions made during or for such period, except as provided in section 281, shall be returned to him.

"(b) In the event that the total contributions of a retired participant, other than voluntary contributions made in accordance with the provisions of section 281, with interest at 4 per centum per annum compounded annually as is provided in paragraph (a) of this section added thereto, exceed the total amount returned to such participant or to an annuitant claiming through him, in the form of annuities, accumulated at the same rate of interest up to the date the annuity payments cease under the terms of the annuity, the excess of the accumulated contributions over the accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

"(1) To the beneficiary or beneficiaries designated by the retired participant in writing to the Director;

"(2) If there be no such beneficiary, to the surviving wife or husband of such participant;

"(3) If none of the above, to the child or children of such participant and descendants of deceased children by representation;

"(4) If none of the above, to the parents of such participant or the survivor of them;

"(5) If none of the above, the duly appointed executor or administrator of the estate of such participant;

"(6) If none of the above, to other next of kin of such participant as may be determined by the Director in his judgment to be legally entitled thereto.

5792

"(c) No payment shall be made pursuant to paragraph (b) (6) of this section until after the expiration of thirty days from the death of the retired participant or his surviving annuitant.

"PART F—PERIOD FOR SERVICE FOR ANNUITIES

"COMPUTATION OF LENGTH OF SERVICE

"SEC. 251. For the purposes of this title, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under the Federal Employees' Compensation Act of September 7, 1916, as amended, and leaves of absence granted participants while performing active and honorably military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

"PRIOR SERVICE CREDIT

"SEC. 252. (a) A participant may, subject to the provisions of this section, include in his period of service—

"(1) civilian service in the executive, judicial, and legislative branches of the Federal Government and in the District of Columbia government, prior to becoming a participant; and

"(2) active and honorable military or naval service in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States.

"(b) A person may obtain prior civilian service credit in accordance with the provisions of paragraph (a) (1) of this section by making a special contribution to the fund equal to 5 per centum of his basic annual salary for each year of service for which credit is sought prior to November 8, 1960, and at 6½ per centum thereafter with interest compounded annually at 4 per centum per annum to the date of payment. Any such person may, under such conditions as may be determined in each instance by the Director, pay such special contributions in installments.

"(c) (1) If an officer or employee under some other Government retirement system becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to the fund effective as of the date such officer or employee becomes a participant in the system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

"(2) No officer or employee, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall be required to make contributions in addition to those transferred, for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such officer or employee on account of contributions made during any period to the other Government retirement fund, at a higher rate than that fixed by section 211 of this Act for contributions to the fund.

"(3) No officer or employee, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall receive credit for periods of service for which a refund of contributions has been made, or for which no contributions were made to the other Government retirement fund. A participant may, however, obtain credit for such prior service by making a special contribution to the fund in accordance with the provisions of paragraph (b) of this section.

"(d) No participant may obtain prior civilian service credit toward retirement under the system for any period of civilian service on the basis of which he is receiving or will in the future be entitled to receive any annuity under another retirement system covering civilian personnel of the Government.

"(e) A participant may obtain prior military or naval service credit in accordance with the provisions of paragraph (a) (2) of this section by applying for it to the Director prior to retirement or separation from the Agency. However, in the case of a participant who is eligible for and receives retired pay on account of military or naval service, the period of service upon which such

5793

retired pay is based shall not be included, except that in the case of a participant who is eligible for and receives retired pay on account of a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or is awarded under chapter 67 of title 10 of the United States Code, the period of such military or naval service shall be included. No contributions to the fund shall be required in connection with military or naval service credited to a participant in accordance with the provisions of paragraph (a) (2) of this section.

"CREDIT FOR SERVICE AT UNHEALTHFUL POSTS

"Sec. 253. The Director may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthy posts, and each year of duty at such posts inclusive of regular leaves of absence, of participants hereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such service, but no such extra credit for service at such unhealthy posts shall be credited to any participant who shall have been paid a salary differential for such service.

"CREDIT FOR SERVICE WHILE ON MILITARY LEAVE

"Sec. 254. Contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

"PART G—MONEYS

"ESTIMATE OF APPROPRIATIONS NEEDED

"Sec. 261. The Director shall prepare the estimates of the annual appropriations required to be made to the fund, and shall cause to be made actuarial valuations of the fund at intervals of five years, or oftener if deemed necessary by him.

"INVESTMENT OF MONEYS IN THE FUND

"Sec. 262. The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in his judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such fund.

"ATTACHMENT OF MONEYS

"Sec. 263. None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 234(e).

"PART H—ANNUITANTS RECALLED, REINSTATED, OR REAPPOINTED IN THE AGENCY, OR REEMPLOYED IN THE GOVERNMENT

"RECALL

"Sec. 271. (a) The Director may recall any annuitant to duty in the Agency whenever he shall determine such recall is in the public interest.

"(b) Any annuitant recalled to duty in the Agency or reinstated or reappointed in accordance with the provisions of section 231(b) shall, while so serving, be entitled in lieu of his annuity to the full salary of the grade in which he is serving. During such service, he shall make contributions to the fund in accordance with the provisions of section 211. When he reverts to his retired status, his annuity shall be determined anew in accordance with the provisions of section 221.

"REEMPLOYMENT COMPENSATION

"Sec. 272. (a) Notwithstanding any other provision of law, any officer or employee of the Agency, who has retired under this Act, as amended, and is receiving an annuity pursuant thereto, and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis, shall be entitled to receive the salary of the position in which he is serving

5794

plus so much of his annuity payable under this Act, as amended, which when combined with such salary does not exceed during any calendar year the basic salary such officer or employee was entitled to receive on the date of his retirement from the Agency. Any such reemployed officer or employee who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits hereunder.

"(b) When any such retired officer or employee of the Agency is reemployed, the employer shall send a notice to the Agency of such reemployment together with all pertinent information relating thereto, and shall pay directly to such officer or employee the salary of the position in which he is serving.

"(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed officer or employee, or from any other moneys, including his annuity, payable in accordance with the provisions of this title.

"REEMPLOYMENT

"Sec. 273. Notwithstanding the provisions of title 5, United States Code, section 62, and title 5, United States Code, section 715a, an Agency officer or employee retired under the provisions of this Act shall not, by reason of his retired status, be barred from employment in Federal Government service in any appointive position for which he is qualified. An annuitant so reemployed shall serve at the will of the appointing officer.

"PART I—VOLUNTARY CONTRIBUTIONS

"Sec. 281. (a) Any participant may, at his option and under such regulations as may be prescribed by the Director, deposit additional sums in multiples of 1 per centum of his basic salary, but not in excess of 10 per centum of such salary, which amounts together with interest at 3 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of his retirement, including all contributions made during or for such period, shall, at the date of his retirement and at his election, be—

"(1) returned to him in lump sum; or

"(2) used to purchase an additional life annuity; or

"(3) used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Director by the participant; or

"(4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Director by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in subparagraph (3) above.

"(b) The benefits provided by subparagraphs (2), (3), or (4) of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by subparagraph (a) (1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

"(c) In case a participant shall become separated from the Agency for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum, compounded as is provided in paragraph (a) of this section, made by him under the provisions of said paragraph (a) shall be refunded in the manner provided in section 241 for the return of contributions and interest in the case of death or separation from the Agency.

"(d) Any benefits payable to an officer or to his beneficiary in respect to the additional deposits provided under this section shall be in addition to the benefits otherwise provided under this title."

Mr. RIVERS. Now, Mr. McCone, the committee will be very pleased to hear your statement.

Mr. McCONE. Thank you, Mr. Chairman.

Mr. BATES. Do we have copies?

Mr. RIVERS. Do we have copies of your statement?

Mr. McCONE. No, I have no copy of this statement. It is very brief.

Mr. RIVERS. Go right ahead.

5795

This is not classified?

Mr. McCONE. It is unclassified. It is a very general statement, sir.

Mr. RIVERS. Fine.

STATEMENT OF JOHN A. McCONE, DIRECTOR OF CENTRAL INTELLIGENCE

Mr. McCONE. It gives me great pleasure to appear before you to open the hearings on H.R. 7216, to amend the Central Intelligence Act of 1949 in the manner which will be discussed in detail by me and my deputy, General Carter—

Mr. RIVERS. Could you speak just a little louder, please?

Mr. McCONE (continuing). And other representatives of the Central Intelligence Agency this morning.

It is my pleasure to introduce them.

On my right is Lt. Gen. Marshall S. Carter, who is the Deputy Director of Central Intelligence.

Mr. Richard Helms, Deputy Director for Plans.

And Mr. Lawrence R. Houston, who is the General Counsel of the Central Intelligence Agency.

I have now been associated with the Central Intelligence Agency for almost 2 years and I have been Director since the 29th of November 1961.

During the period of my service with Secretary Forrestal in 1947 and 1948, and as Under Secretary of the Air Force in 1950 and 1951, and more recently as Chairman of the Atomic Energy Commission in 1958 to 1961, I naturally had a very considerable contact with CIA. Hence, through direct participation in recent years, and through a less intimate but still important contact over a long period of time, I have been able to personally evaluate the quality, integrity, and the dedication of the employees of the Agency.

It is my belief that the caliber of the personnel of the Agency is unequalled in any other agency of Government and, for that matter, any private industry with which I have been associated. I can say very frankly that I have never been surrounded by a group of men of greater intellectual quality or more sincere dedication of purpose than the men associated with me in the Central Intelligence Agency.

For the most part, the senior men and women in the Agency possess a most unusual academic background, and, in addition, extending over a high degree of professionalism gained through uninterrupted service extending over a great many years with the CIA and its predecessor organizations.

With world conditions as they are, and in view of the serious responsibilities assigned to the Central Intelligence Agency by law or by Presidential directives, I believe it essential that the superb quality of men and women of CIA be maintained and indeed be improved, and, moreover, that the dedication of these employees be recognized by the provision of adequate benefits.

I believe the enactment of this legislation will be a positive step in this direction. The legislation will significantly improve the career structure of the Agency and will permit greater efficiency in personnel management of the Agency.

As this committee knows, this legislation is designed to establish a Central Intelligence Agency retirement system which will be similar

5796

to the retirement system of the Foreign Service, which extends also to personnel of other departments of Government who operate extensively abroad. This retirement system differs importantly from that of the Civil Service, which is designed to meet the requirements of domestic employment.

Other provisions of the bill are mainly technical in nature and merely bring the Central Intelligence—

Mr. GAVIN. I wonder if the gentleman will talk a little louder, please.

Mr. McCONE. Yes.

Other provisions of the bill are mainly technical in nature and merely bring the Central Intelligence Agency Act of 1949 in line with authorities already existing in the Foreign Service Act, and in other legislation. Some of these arrangements are new to CIA, but none is new in Government, and there are precedents for each one as will be shown in today's presentation.

The task of the Central Intelligence Agency is a most serious and difficult one. We are charged by law with the responsibility of furnishing to the President and his policy advisers evaluations concerning the intentions of other countries, most particularly of the Communist bloc. Upon these evaluations hinge a great many basic decisions which affect the security and the future of the United States, and, for that matter the free world.

We in the Government can afford nothing less than the best in personnel who shoulder this responsibility, and the proposed Central Intelligence Agency retirement system will in my opinion do a great deal in maintaining the quality of that which we now have and in encouraging its continual improvement.

I therefore heartily endorse this legislation, and I urge its early and favorable consideration by the Congress.

As this committee knows, Lt. Gen. Marshall Carter, Deputy Director of Central Intelligence, serves as the General Manager of the Central Intelligence Agency. This is a necessary arrangement if I, as the President's principal intelligence officer, am to be free to consider problems of the intelligence community as a whole.

General Carter, therefore, is the man in CIA most familiar with all of the details of this legislation and best equipped to present the matter to you and to answer your questions.

However, this is a subject which has been close to me in CIA and in the State Department when I was studying this problem as a member of Secretary Dulles' personnel policy committee, and also in the Defense Department as well.

In introducing General Carter and asking that he continue this presentation, I wish to assure you of my support of this legislation and my desire to answer any questions you may care to direct to me.

General Carter.

Mr. RIVERS. Are there any questions to the Director? Because he has a very important engagement.

Mr. BENNETT. Was an approximation made on the cost of this?

Mr. RIVERS. General Carter is going to testify to the cost of everything.

Mr. McCONE. That is correct.

General CARTER. Yes, sir; I will testify subsequently.

5797

Mr. RIVERS. Since General Carter will be the principal representative of Mr. McCone, unless the committee has any special questions of the Director, we could excuse him and just hear from General Carter, who will be here—you will be here all the time?

General CARTER. Yes, sir.

Mr. RIVERS. Are there any questions of the Director?

(No response.)

Mr. RIVERS. Mr. McCone, we thank you for coming up and for your testimony. We will excuse you now, because I know of your important meeting. We will hear from General Carter, and, if we need you, we will send for you.

Mr. McCONE. Thank you very much, Mr. Chairman.

Mr. RIVERS. Thank you very much.

General Carter, we will hear from you now.

You may proceed, sir.

General CARTER. As you have been told by Mr. McCone—

Mr. RIVERS. Now, do we have a copy of your statement?

General CARTER. Yes, sir; I shall follow closely our statement of justification and explanation, which has been distributed to you.

Mr. RIVERS. Let us find your statement first.

General CARTER. And I shall try to answer questions as they are asked.

Mr. RIVERS. What page is this now?

Mr. BLANDFORD. It is the first page.

Mr. WILSON. Part A, first section; is that right?

General CARTER. I am now starting on part A.

Mr. BLANDFORD. Purpose.

General CARTER. Purpose of the proposed bill.

Mr. BLANDFORD. Yes, sir; section 1, improved retirement system.

Mr. RIVERS. Good. You may proceed.

General CARTER. The proposed bill permits the Agency to improve its retirement program by authorizing the establishment of a retirement system corresponding to that of the Foreign Service.

We need to attract and retain a force of highly motivated careerists who are intensively trained in unique skills. However, we are unable to provide full-term careers for many individual officers.

In order to minimize the adverse effect of necessary programs of managed attrition and to preserve our ability to recruit and retain the high-caliber personnel we need, we must make reasonable provision for the futures of those individuals whom we must separate before they have completed a full-term career of 30 years or more.

Therefore, we are adding to the Central Intelligence Agency Act of 1949, as amended, a new title II, which will establish for a limited number of our employees a retirement and disability system corresponding to that established for persons serving in the Foreign Service of the Department of State.

Section 4 of the original act was drafted to extend to Agency employees serving overseas travel expenses and oversea allowances similar to those extended to Foreign Service personnel.

Section 2 of the new act will make appropriate modification to bring this up to date.

Also included are certain other amendments which have been determined to be necessary, and which we will discuss in detail later.

Mr. HARDY. Excuse me.

5798

Mr. Chairman, are we going to come back—should we mark the point we want to raise questions on?

Mr. RIVERS. I wish that you would, because this statement is long. If the committee doesn't mind, I would like for the general to complete his statement. And if you would mark it we could come back. Because I think a lot of these things—a lot of these things I believe will become clearer.

Mr. HARDY. I want to just get an understanding as to procedure, Mr. Chairman.

Mr. RIVERS. Let's do that.

General, you complete your statement, and we will come back to you.

General CARTER. Yes, sir.

As pointed out by Mr. McCone, all regular employees of the Central Intelligence Agency are at present covered by the provisions of the Civil Service Retirement Act. This coverage is appropriate for those whose conditions, obligations, and terms of service are comparable to those of Federal employees generally.

However, we have a serious problem in our need to make more adequate provision for certain of our employees who should be retired at an earlier age, and with a more equitable annuity than can be presently provided under the Civil Service Retirement Act. This need stems from the fact that we cannot provide or expect from many individuals in our service a full-term working career of 30 years or more.

The nature of our mission requires people who are highly motivated, who have developed and can develop unique skills, specialized abilities through their continuing training and service in the Agency over a long period of time. A substantial portion of our personnel accept, as do members of the military services, the obligation to serve anywhere at any time for any period of time—not at their own will, but at the direction of the Agency. And they must be available for duty on a 24-hour-a-day basis, just as are the military.

Further, the stresses and strains of uneven work periods, uncertain hours, duty in unhealthful locations, and arduous assignments, require people who have a high degree of vigor, adaptability, resilience, vitality, and endurance.

There are other factors pertaining to the individuals, themselves, which over the years limit their ability and their desire to continue in oversea service.

Our experience has shown that many officers and members of their families will in time incur physical difficulties, physical impediments, which limit or preclude their further assignment overseas. The extreme climates and inferior medical facilities in many foreign areas make living abroad less healthful than in the United States.

Americans, also because of the advances of sanitation and public health in this country, have failed to develop the natural immunities which most foreigners seem to develop, particularly in their own countries. Consequently, Americans are more susceptible than local inhabitants to the diseases of a particular area.

Finally, there is motivational exhaustion. This term is used to describe a gradual lessening of interest and enthusiasm of an officer as a result of long and continued impingements on his personal and family life.

5799

These stem from the transient nature of his assignments, complications, and restrictions of security requirements, intrusions on his family life.

The dynamic nature of intelligence work produces sudden and sometimes radical shifts in the types of personnel required and in their deployment.

Civil troubles often bring about a retrenchment of activity on the part of other U.S. Government agencies, but a reorientation and reintensification of the Agency effort.

Completion of a mission of a temporary nature or a shift in emphasis or direction of operations may result in an excess of officers who are skilled in a relatively narrow field. Their primary qualifications thus become obsolete or unneeded, and they become occupationally surplus.

The unifying bonds among all Agency personnel abroad are: First, an intensive preoccupation with securing access to information which has a bearing on U.S. intelligence requirements.

Second, the advancement of U.S. interests and objectives and combined with this is the fact that all undergo stresses and tensions, both psychological and physical, which permeate their activity at all times.

We find it increasingly necessary in our operations to impose manpower controls to insure the appropriate alinement as to age, qualifications, and other characteristics of our employees engaged in conducting or supporting foreign intelligence operations.

Insofar as possible, imbalances should be and are corrected by the reassignment of officers who cannot or should not continue such work in the field. However, even encouraged and induced attrition will continue to be necessary, and a program of managed attrition is feasible only if it is linked to a system of retirement benefits providing fair annuities to those who have earned early retirement.

Our proposed bill would provide these individuals with a more equitable annuity beginning immediately upon their separation. This would place them in a better position to accept less demanding and probably lower paid employment. It is often difficult for an Agency employee to obtain other employment. The special skills required for intelligence work developed over the years by training and experience within the Agency are not always directly applicable to other fields.

This situation is aggravated by security considerations, which do not allow an Agency employee to adequately describe to a prospective employer the substance of his Agency duties and responsibilities. There is at times a reluctance on the part of other employers, both in Government and in industry, to hire a former intelligence officer. This attitude reflects their concern particularly in private business, that the attitude of foreign officials toward their enterprises might be adversely affected if they were known to be hiring former intelligence officers.

During the past year we have separated 125 individuals from the Agency as surplus to our needs because of some or all of the various factors described above. These people have given years of competent and faithful service to the Agency, as well as to the Government. The process of terminating their employment was made the more

5800

painful because of the relatively inadequate assistance which the Agency could offer in making occupational transfers or in retiring them prematurely.

In order to minimize the adverse effect of such programs on the Agency's ability to recruit and retain the caliber of personnel we need, and particularly to minimize these effects on the dedicated personnel already in the service of the Agency, we must make better provision for the futures of those individuals who are separated before completing a full term career of 30 years or more.

An important means for doing so is to establish this retirement system, permitting earlier retirement with a more nearly adequate and equitable annuity than is possible under the civil service retirement system.

Recognizing the difficulties in developing an entirely new retirement system, the Agency examined existing systems. We have determined that the Foreign Service system fulfills Agency requirements, and is appropriate for those Agency employees whose careers involve conditions of service comparable to those of Foreign Service personnel.

In this connection, a limited number of employees of the Agency are exposed to precisely the same conditions of service as the Foreign Service. Further, by adopting a system corresponding to that of the Foreign Service the Agency can take advantage of the very considerable study and experience which have gone into its development.

In appendix II of this paper we compare the pertinent provisions of the proposed Agency retirement system with the Foreign Service and the civil service retirement systems. This is similar to a comparison appearing in the report of the House Committee on Foreign Affairs in the 2d session of the 86th Congress. It was prepared at that time in connection with proposed amendments to the Foreign Service Act of 1946 as amended, relating to the retirement system, which proposals were subsequently enacted into law.

APPENDIX II

Comparison of pertinent provisions of the civil service, Foreign Service, and proposed CIA retirement and disability systems

Items	Civil service retirement system (CSR)	Foreign Service retirement system (FSR)	Proposed CIA retirement system (CIAR)	Comments
A. Coverage.....	Government employees generally, unless temporary, intermittent or subject to another Federal retirement system.	All FSO's plus non-FSO's who have served as chiefs of mission for an aggregate period of 20 years or more; Foreign Service staff officers and employees with 10 or more years of continuous service in the Foreign Service.	Career personnel who are designated as participants in accordance with criteria established by the Director.	Agency career personnel are currently covered by civil service.
B. Contributions:				
1. Compulsory.....	6½ percent of employee's basic salary; agency contribution of 6½ percent of employee's basic salary.	6½ percent of employee's basic salary; agency contribution of 6½ percent of employee's basic salary.	Same as FSR.....	All 3 systems are the same.
2. Voluntary.....	Maximum 10 percent of total basic salary received since Aug. 1, 1920; payable in multiples of \$25.	Maximum of 10 percent of total basic salary received since July 1, 1939; payable in multiples of 1 percent.	Same as FSR.....	FSR and CIAR are approximately same as CSR.
C. Benefits:				
1. Annuitants.....	Annuity: 1½ percent high-5 average years salary times 5 years; plus ¼ percent times next 5 years; plus 2 percent times all years over 10 years of creditable service; annuity not to exceed 80 percent of high-5 average salary.	Annuity: 2 percent high-5 average years salary times total number years creditable service not to exceed 35 years.	Same as FSR.....	CIAR and FSR have a 2-percent formula. CSR provides maximum 80 percent high-5 average. CIAR and FSR provides maximum 70 percent high-5 average.
2. Penalty reduction for age.....	½ of 1 percent for each of the 1st 60 months under age 60 and ¼ for each additional month over 60 months under age 60.	None.....	Same as FSR.....	Under CSR there is a substantial reduction in annuity for years under age 60, 15 percent when retiring at age 50. There is no reduction under FSR or CIAR.
3. Reduced annuities.....	Reduced annuity with benefits to widow or widower; corresponding benefits to each dependent child.	Surviving children, widowers, and dependent widowers may be included as survivor annuitants.	Same as FSR.....	All 3 systems have comparable survivorship benefits.
4. Survivor annuities: (a) Married participants.....	Basic general formula: Widow or widower (if survivor annuity elected by retiring employee): 55 percent of all or whatever portion of earned annuity specified as base. Annuity terminates on death or remarriage.	Basic general formula: Widow or widower (if survivor annuity elected by retiring employee): ½ of all or whatever portion of earned annuity specified as base. Annuity terminates only on death of widow or widower.	Same as FSR.....	Important difference between the CSR and FSR and CIAR is that the annuity of a surviving widow or widower terminates only in death of such survivor. CSR has a 5-percent advantage for survivor annuities due to 1962 amendment to CSR Act.

5801

APPENDIX II--Continued

Comparison of pertinent provisions of the civil service, Foreign Service, and proposed CIA retirement and disability systems--Continued

Items	Civil service retirement system (CSR)	Foreign Service retirement system (FSR)	Proposed CIA retirement system (CIAR)	Comments
C. Benefits--Continued				
4. Survivor annuities--Continued				
(a) Married participants-----	<p>Reduction for survivor annuity: Employee's annuity reduced by 2½ percent of 1st \$3,600 of any amount specified as base for survivor benefits plus 10 percent of the amount over \$2,400 up to the full amount of employee's annuity.</p> <p>Children: With a surviving wife or husband: smallest of (1) 40 percent of average salary divided by number of children; (2) \$600; or (3) \$1,800 divided by number of children. With no surviving wife or husband: smallest of (1) ½ average salary divided by number of children; (2) \$720; or (3) \$2,160 divided by number of children.</p> <p>Termination annuity: Children annuities terminate at age 18 (or on recovery from incapacity after 18) marriage or death. On termination of any child's annuity by death, wife or husband's annuity by death, annuities of surviving children are recomputed as though person whose annuity was terminated had not survived deceased employee.</p> <p>The annuity of an unmarried child between 18 and 21 years of age who is a student pursuing a regular full time course of study or training in residence in a high school, trade school, college, or university continues until the age of 21.</p>	<p>Reduction for survivor annuity: Employee's annuity reduced by 2½ percent of 1st \$2,400 or any amount specified as base for survivor benefits plus 10 percent of the amount over \$2,400 up to the full amount of employee's annuity.</p> <p>Children: With a surviving wife or husband: smallest of (1) 40 percent of average salary divided by number of children; (2) \$600; or (3) \$1,800 divided by number of children. With no surviving wife or husband: smallest of (1) ½ average salary divided by number of children; (2) \$720; or (3) \$2,160 divided by number of children.</p> <p>Termination annuity: Children annuities terminate at age 18 (or on recovery from incapacity after 18) marriage or death. On termination of any child's annuity by death, wife or husband's annuity by death, annuities of surviving children are recomputed as though person whose annuity was terminated had not survived deceased employee.</p> <p>No comparable provision-----</p>	<p>Same as FSR-----</p> <p>Same as FSR-----</p> <p>Same as FSR-----</p> <p>Same as FSR-----</p> <p>Same as FSR-----</p>	<p>1962 amendment to the CSR Act increased from \$2,400 to \$3,600 the amount from which 2½ percent is taken in reducing the employee's annuity. This results in a \$90 annual advantage to a CSR retiree who elects a survivor annuity.</p> <p>All 3 systems are the same.</p> <p>All 3 systems are the same.</p> <p>All 3 systems are the same.</p> <p>Neither the FSR nor the CIAR has a provision similar to CSR. This provision was added to CSR in 1962 amendments to the CSR Act.</p>
(b) Unmarried participant-----	<p>Any person in whom annuitant has insurable interest (if survivorship and reduced annuity elected): 55 percent of participant's reduced</p>	<p>Designated beneficiary: 50 percent of participant's reduced annuity. Retiring employee's annuity is reduced 10 to 40 percent depending</p>	<p>Same as FSR-----</p>	<p>FSR and CIAR do not require that designated beneficiary have an insurable interest. 1962 amendment to CSR increased survivor</p>

5802

	annuity. Retiring employee's annuity is reduced 10 to 40 percent depending on difference between his age and age of person designated to receive survivor annuity. Survivor annuity terminates on death of survivor.	on difference between his age and age of person designated to receive survivor annuity. Survivor's annuity terminates on death of survivor.		annuity to 55 percent. FSR and CIAR remain at 50 percent.
5. Death in service: (a) Widow-widower	Widow or dependent widower: 55 percent of participant's earned annuity payable until death or remarriage or until widower becomes capable of self-support.	Widow or dependent widower: 50 percent of participant's earned annuity payable until death of surviving dependent widower or until dependent widower becomes capable of self-support; however, annuity is computed as if participant had 20 years of service or by projection to mandatory retirement age for his class.	Same as FSR	1962 CSR amendment increased survivors annuity to 55 percent; FSR and CIAR remain 50 percent. FSR and CIAR provide continuation of widow's annuity until death and allows the survivor to receive annuity based on at least 20 years of service.
(b) Children	Children: With a surviving wife or husband: Smallest of (1) 40 percent of average salary divided by number of children; (2) \$600; or (3) \$1,800 divided by number of children. With no surviving wife or husband: Smallest of (1) 1/2 average salary divided by number of children; (2) \$720; or (3) \$2,160 divided by the number of children.	Children: With a surviving wife or husband: Smallest of (1) 40 percent of average salary divided by number of children; (2) \$600; or (3) \$1,800 divided by number of children. With no surviving wife or husband: Smallest of (1) 1/2 average salary divided by number of children; (2) \$720; or (3) \$2,160 divided by the number of children.	Same as FSR	All 2 systems are the same.
(c) Former employee or former participant eligible for deferred annuity who dies before reaching eligibility age.	If the former employee had not received a refund after his separation from Government service, the amount he paid into the civil service retirement fund, plus any accrued interest would be payable immediately after death.	If a foreign service officer who separated from class 4 or 5 and who has elected to receive retirement benefits dies before reaching the age of 60, his death shall be considered a death in the service.	Same as FSR except applicable to GS-12 and 13.	FSR and CIAR provide payment of "death in service" benefits.
6. Disability retirement	After 5 years of civilian service: same as full age and service benefit. Guaranteed 40 percent of high-5 average salary or annuity projected to age 60 whichever is lesser. Elective survivor benefits are based on employee's actual years of service credit.	After 5 years of civilian service: same as full age and service benefit. Guaranteed 40 percent of high-5 average salary or annuity projected to mandatory retirement age for his class. Elective survivor benefits are based on service credit upon which participant's annuity was computed rather than his actual years of service credit.	Same as FSR	All 3 systems are essentially the same.
	Tax exemption: Under the Federal income tax "sick pay" exclusion, up to \$100 per week of disability annuity is exempted until annuitant attains retirement age.	Tax exemption: Entire disability annuity is exempted from Federal income tax.	Same as FSR	If FSR or CIAR annuity to employee has been based on projecting service, survivor annuity is computed on that basis rather than the lesser actual service period. FSR and CIAR permit full exemption of disability annuity from Federal income tax. Provision for limited exemption under CSR depends on sick pay exclusion of the Internal Revenue Code.

5803

APPENDIX II—Continued

Comparison of pertinent provisions of the civil service, Foreign Service, and proposed CIA retirement and disability systems—Continued

Items	Civil service retirement system (CSR)	Foreign Service retirement system (FSR)	Proposed CIA retirement system (CIAR)	Comments
C. Benefits—Continued				
7. Deferred annuity.....	Deferred annuity payable at 62 if separated employee has 5 years of civilian service credit.	Deferred annuity payable at age 60 if separated employee has 5 years of civilian service credit.	Same as FSR.....	FSR and CIAR deferred annuity begins 2 years earlier than CSR deferred annuity.
8. Selection out/discontinued service retirement.	A. Immediate annuity upon involuntary separation if employee meets either of the following requirements: (1) attainment of age 50 and completion of 20 years of creditable service including 5 years of civilian service. (2) Regardless of age if employee has completed 25 years of creditable service, including 5 years of civilian service. B. At employee's option, refund of contributions or deferred annuity if does not meet the above requirements.	A. Classes 1, 2, or 3: retirement on annuity computed on regular 2 percent formula. Age no factor. B. Classes 4, 5, 6, or 7: (1) separation payment of $\frac{1}{2}$ of a year's salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of 1 year's salary payable without interest in lump sum or 3 equal installments; (2) plus refund of contributions or deferred annuity. An immediate annuity if age 50 with 20 years service.	Same as FSR except applicable to GS grades comparable to FS classes indicated. FS classes 1 through 3 compare to GS-14 and above; FS classes 4 through 7 compare to GS-13 and below.	FSR and CIAR authorize immediate annuity regardless of age for FS classes 1-3 and GS grades 14 and above. FSR and CIAR also provide for "separation compensation" in FS 4 through 7 or GS-13 and below.
9. Disposition of contributions in excess of benefits received.	If deceased individual's contributions are not returned in the form of annuity (to individual or his survivors), the unreturned contributions must be paid to a designated beneficiary; or in order of precedence to widow, children, parents, etc.	If deceased individual's contributions are not returned in the form of annuity (to individual or his survivors), the unreturned contributions must be paid to a designated beneficiary; or in order of precedence to widow, children, parents, etc.	Same as FSR.....	All 3 systems are the same.
D. Creditable service:				
1. Leave without pay.....	Includes leave of absence without pay granted during covered employment while performing active honorable military service. Includes leave of absence without pay granted during covered employment while receiving FEC benefits.	Includes leave of absence without pay granted during covered employment while performing active honorable military service. Includes leave of absence granted during covered employment while receiving FEC benefits.	Same as FSR..... Same as FSR.....	All 3 systems are the same. All 3 systems are the same.
2. District of Columbia employment.	Includes civilian employment with District of Columbia government.	Includes civilian employment with District of Columbia government.	Same as FSR.....	All 3 systems are the same.
3. Transfer of funds.....	No provision.	Provides for direct transfer to FSR Fund of all regular contributions (with interest) made by officer or employee to other government retirement system under which previously covered. Funds transfer discharges other system of all bene-	Same as FSR.....	FSR and CIAR permit direct transfer of funds from CSR upon becoming a participant.

5804

E. Reemployment of annuitants-----

If retirement is based on involuntary separation (except for age retirement) which was not due to any fault of his own, when reemployed the person's annuity will be either discontinued or withheld from salary.

(1) If the reemployment is subject to the Retirement Act, his annuity will be discontinued from the date he is reemployed and his future retirement rights will depend on the law in effect at the time he is separated from the reemployment.

(2) If the reemployment is not subject to the Retirement Act, his annuity payments will continue without interruption but his salary during reemployment will be reduced by the amount of annuity he receives. If--

(a) the annuitant's retirement was based on a voluntary separation or on an involuntary separation for cause.

(b) the annuitant was retired for age,

(c) he was a disability annuitant reemployed after reaching age 60, or

(d) he was a disability annuitant found recovered or restored to earning capacity and temporarily reemployed before reaching age 60, his annuity will continue but his salary during reemployment will be reduced by the amount of annuity he receives. If this reemployment was of a year or more duration the reemployed annuitant would be eligible for a supplemental annuity. (Reemployment service under another retirement system for Federal or District of Columbia Government employees and service in a few particular positions--the President and certain U.S. judges are not qualified for this purpose.)

fit obligations based on service involved.

A reemployed annuitant may receive the salary of the position to which he is appointed plus so much of his annuity, which when combined with the salary does not exceed the salary which such person was entitled to receive in the Foreign Service on the date of his retirement. Such reemployment does not affect the annuity earned under the Foreign Service retirement and disability system, if during the period of reemployment he is employed under another Federal retirement system. He will contribute to the other system, and it is possible to qualify for benefits under the other system.

Same as FSR-----

FSR and CIAR provides for potential higher combined income for reemployed Foreign Service annuitants and provides authority to reemploy FS retired for age.

5806

I have brought with me charts which highlight the specific features of the proposed system which are different from the civil service retirement system, and which are of particular importance in providing a suitable retirement program for the employees to be covered.

CHART 1.—*Comparison of principal provisions of the civil service, Foreign Service, and proposed CIA retirement Systems*

Provisions	Civil Service	Foreign Service and CIA
General:		
Employee contribution.....	6½ percent of basic pay.....	Same.
Basic annuity formula.....	Based on high 5-year-average salary: 1½ percent of high 5 times 1st 5 years' service. +1¼ percent of high 5 times 2d 5 years' service. +2 percent of high 5 times remaining years service.	Based on high 5-year average salary: 2 percent of high 5 times total years' service.
Maximum annuity.....	80 percent of high 5 salary.....	70 percent of high 5 salary.
Mandatory retirement.....	Age 70 with 15 years' service.....	Career ambassador and career minister or GS-18 and above: age 66. FSO class 1 and below or GS-17 and below: age 60. Age 50, 20 years' service (full earned annuity, not reduced).
Optional retirement (immediate annuity).	Age 60, 30 years' service; age 62, 5 years' service; and age 55, 30 years' service, annuity is reduced by 5 percent.	FSO classes 1-3 or GS-14 and above: Immediate annuity at any age, 5 years' service (annuity not reduced). FSO Classes 4-7 or GS-13 and below: Separation pay at rate of 1 month's salary per year of service up to 1 year's salary; plus deferred annuity at age 60. Age 50, 20 years' service (full earned annuity, not reduced).
Discontinued service, selection out.	Any age, 25 years' service; age 50, 20 years' service (immediate, but annuity is reduced by 15 percent).	FSO classes 1-3 or GS-14 and above: Immediate annuity at any age, 5 years' service (annuity not reduced). FSO Classes 4-7 or GS-13 and below: Separation pay at rate of 1 month's salary per year of service up to 1 year's salary; plus deferred annuity at age 60. Age 50, 20 years' service (full earned annuity, not reduced).
Disability retirement:		
Age and service.....	Any age, 5 years' service.....	Same.
Minimum annuity.....	Lesser of: 40 percent high 5-year-average salary or annuity computed by extending service to age 60.	Do.
Taxability.....	Under Federal income tax "sick pay" exclusion, 1st \$100 per week tax exempt until optional retirement age.	Fully tax exempt.
Survivor annuity to widow:		
Reduction of employee's annuity.	2½ percent of 1st \$3,600 plus 10 percent of balance.	2½ percent of 1st \$2,400 plus 10 percent of balance.
Amount of widow's annuity.	55 percent of employee's basic annuity.	50 percent of employee's basic annuity.
Termination of widow's annuity.	Death or remarriage.....	Death only.
Reemployment of annuitant.....	Annuity offset against salary.....	Annuity plus salary cannot exceed basic pay at time of retirement.

The employees' contribution to the retirement system is the same under both systems, that is 6½ percent of his basic pay.

The annuity formula under Foreign Service is a straight 2 percent of the employee's average salary for his highest paid 5 years of service. Under civil service, the formula is 1½ percent for his first 5 years, 1¼ percent for the second 5, and 2 percent for the remainder.

Mr. RIVERS. You just start off with 2, don't you?

General CARTER. We start off with 2 and stay at 2, just as the Foreign Service Act.

5807

The maximum annuity under civil service is 80 percent of the employee's average high 5-year salary, while under the Foreign Service Act, and under our proposed act, it is 70 percent. However, few employees under our proposed retirement system would have enough years of service to make this difference significant.

The mandatory retirement age under civil service for all employees is 70, while it is 60 for most employees under Foreign Service. Under the proposed system, an employee can voluntarily retire at age 50 and receive the full annuity which he has earned.

Mr. BATES. That is with 20 years' service?

General CARTER. Twenty years' service at age 50.

Under the civil service retirement system, the earliest age for voluntary retirement is 55, and this is permitted only when the employee has 30 years of service. Moreover, his annuity is reduced by 1 percent for each year that he is under age 60. For example, an employee whose average high 5-year salary has been \$7,575—this is about a GS-9—and who has 20 years of service when he reaches age 50, can voluntarily retire under our proposed system and receive an annuity of \$3,030.

If his average high 5-year salary has been \$11,515—this is approximately a GS-13—he would receive an annuity of \$4,606. If his average high 5-year salary has been \$16,005—about a GS-15—his annuity would be \$6,402. If he had been under the civil service system with only 20 years' service he could not voluntarily retire. If he left the service voluntarily, he would have the option of withdrawing his contributions from civil service retirement system, or of waiting until he had reached age 62, at which time he would be eligible for a deferred annuity.

An employee who has reached age 55, and has 30 years of service, may retire voluntarily under either system. However, his annuity would be 12 percent higher under our system than under the civil service system. This is because under civil service his annuity would be reduced 5 percent because of his age, since he had not reached age 60, and the annuity formula under the proposed system is a straight 2 percent, while under the civil service system it varies from one and a half up to 2 percent depending upon years of service.

The proposed system provides an immediate annuity based on the employee's total period of service, if he is in GS grade 14 or above, and if he is retired involuntarily. If he is in grade 13 or below, he receives a separation payment equivalent to 1 month's salary for each year of service. He may also obtain either a refund of his retirement withholdings, or he can leave these amounts to his credit toward a deferred annuity at age 60. Under the civil service system an employee who is involuntarily separated at age 50 with 20 years of service or at any age with 25 years of service, can receive an immediate annuity. However, his annuity is reduced 1 percent per year for each year he is under age 60, down to age 55, and 2 percent per year for each year he is under 55 down to age 50. The maximum reduction under this formula is 15 percent.

Mr. ILARDY. Mr. Chairman, I think since we have these charts on here, and we are getting into some detail here, now—I don't know whether these appear, but perhaps we ought to clear up any questions that come out here now. Otherwise, we may not get back to them.

5808

Mr. RIVERS. I think that might be a good idea. If you don't mind, General—it won't knock you off the track, because you seem to know this thing pretty much.

General CARTER. No, sir. As a matter of fact, with the exception of the explanation of these charts, my discussion on this particular portion is just about over.

Mr. HARDY. As long as we are talking about these charts, though, there are one or two questions that seem to come to my mind now. I am afraid I am going to forget them if I don't throw them out for an answer now.

Mr. RIVERS. Go ahead and ask him.

Mr. BATES. Are these in the book anywhere?

Mr. HOUSTON. Yes, sir.

Mr. BATES. Where do we find it?

Mr. HOUSTON. Tab 2.

Mr. HARDY. Of course, we may get to those when we start reading the bill.

But let me pursue this one for just a second, General, if I may.

Now, you are proposing in this bill the same provision that Foreign Service has. You have outlined them up there?

General CARTER. Yes, sir.

Mr. HARDY. Now, the question that I would like to clear up at the moment: Under this involuntary selection, or selection out as you have indicated, you say that FSO-1 to 3, or under Civil Service, GS-14 and above, would go out at any age with an immediate annuity, with 5 years' service, without any reduction in there?

General CARTER. Based on his total period of service—

Mr. HARDY. Which has to be only 5 years?

General CARTER. Yes, sir.

Mr. HARDY. Is that what it says?

General CARTER. Yes, sir.

Mr. RIVERS. If he is a GS-14 or above?

General CARTER. If he is a GS-14 or above and is retired involuntarily.

Mr. BATES. Is that for physical purposes or any purpose?

General CARTER. No, sir. This is for administrative purposes.

Mr. HARDY. That is what I wanted to understand. I don't think I am going to buy that. And I didn't realize that Foreign Service had it.

General CARTER. I would like Mr. Emmett Echols, our Director of Personnel, to respond to your question, Mr. Hardy.

Mr. ECHOLS. We have a Mr. William Woodyear here, who is an expert on the Foreign Service retirement system, and he can perhaps explain in detail why this provision is in the Foreign Service system and how it operates.

Mr. HARDY. Well, I will be glad to hear the explanation, but it is going to have to be a darned good one to convince me.

Mr. RIVERS. If we are going to get all mixed up here, then we better hold it up.

Mr. HARDY. All right. Then we will have to come up with it later. Because I have one or two other questions.

Mr. BLANDFORD. Mr. Chairman—

Mr. RIVERS. Mr. Blandford.

Mr. BLANDFORD. This is the forced attrition provision, which you mentioned in your statement.

Mr. RIVERS. Yes.

Mr. BLANDFORD. And which I think should be very fully explained at this point.

Mr. RIVERS. Go ahead.

Mr. HARDY. Is that 253?

Mr. BLANDFORD. No, sir; that is something else; 253 is duty at unhealthful ports.

Mr. RIVERS. Why not take it up right now.

Mr. BLANDFORD. I think this is a good place to take up the forced attrition concept.

Mr. RIVERS. Let us thresh this out now. A lot of us have reservations.

Mr. Hardy, since you started, you go ahead.

Mr. HARDY. I would like to understand what he is talking about here. But he is going to have a hard time, I think, justifying permitting a man to go out involuntarily after 5 years of service without any reduction in his annuity, and that is regardless of his age.

Mr. STRATTON. Mr. Chairman, may I ask a question in that connection? I think it may throw some light.

Mr. RIVERS. Mr. Hardy, do you yield to Mr. Stratton?

Mr. HARDY. It is all right. Maybe if we get the explanation we will get it understood. If not—I don't have any objection to anybody contributing to it. I just want to understand it.

Mr. RIVERS. Who can contribute to Mr. Hardy's question?

Mr. ECHOLS. I think I can speak to it, sir.

Mr. RIVERS. Yes.

Mr. ECHOLS. The Foreign Service has occasion to bring in expertise for lateral entry into the service, of people who are experts in particular fields and people who have achieved stature and reputation in other fields of work, and have the skills that the Department needs. This would apply equally to CIA, upon occasion.

Now, these men who are appointed at classes 1, 2, or 3, or in our case grades 14 and above, are men who have arrived, who have stature and reputation in a particular career field in non-Government or non-Foreign Service or non-CIA, and to induce these people to give up their established positions in existing careers to come to the Government, be it the State Department or CIA, puts them in a position of jeopardy. They may or may not be successful in these new careers. There may or may not be a continuing requirement for their expertise on a career basis. So these people face peculiar risks. If in less than 5 years, or less than their normal working span, they are let out as being no longer required by the Foreign Service, or by CIA. And I believe it is this reason primarily that these people are felt to be entitled to an immediate annuity. It is not because of their grade, but because they have given up a position with industry or perhaps with another Government agency, and have subjected themselves to a lesser degree of tenure.

Mr. HARDY. I am not going to buy that one. You have the same sort of racket practiced now by some people who get jobs after retiring from the military, just in order to get social security coverage, which they did not accumulate when they were on active duty. And this is—

5810

Mr. STRATTON. Mr. Chairman.

Mr. HARDY. This is not one—unless you have a better explanation of it than that—

Mr. RIVERS. Wait a second. Let Mr. Hardy finish.

Mr. HARDY. I have enough, Mr. Chairman. I have heard enough. There are too many gimmicks can be used in this kind of an arrangement.

Mr. GAVIN. Mr. Chairman.

Mr. STRATTON. Mr. Chairman.

Mr. RIVERS. Mr. Gavin is next.

Mr. Gavin.

Mr. GAVIN. How long has this system been in effect?

General CARTER. The Foreign Service system, sir?

Mr. GAVIN. Yes.

General CARTER. 1946.

Mr. GAVIN. This retirement system we are talking about now.

General CARTER. How long have you had the Foreign Service retirement?

Mr. WOODYEAR. Since 1946.

General CARTER. Mr. Woodyear is from the Department of State, sir. He is an expert on their Foreign Service Act.

Mr. HARDY. I may offer an amendment to the Foreign Service Act to delete that section.

General CARTER. And Mr. Woodyear stated that they have had the Foreign Service Act since 1946, sir.

Mr. HARDY. Is this provision in it?

Mr. WOODYEAR. This point that you expressed concern over, sir, with respect to immediate annuity benefits for those in classes 3, 2, and 1 in the Foreign Service Officer Corps who are selected out. There is a factor that hasn't been considered here.

It is extremely rare. There is a 5-year minimum requirement that a participant have that much service before he receives the benefit. It is extremely rare. However, I can recall of no instance where any officer has been selected out with that little service, or anywhere near that little. They are older men by the time they get into class 3. They have usually come up through the career system or if they have come in through lateral entry, as has been suggested by Mr. Echols, they have had prior Government service, and they have usually had 15 or 20 years of Federal service credit which is applicable to their retirement.

Mr. HARDY. I am not talking about those. I am talking about the one that comes in and has a total of only 5 years' service, that is all.

Mr. WOODYEAR. Most unusual and most rare in the Foreign Service. I can't speak for the CIA.

Also in the Foreign Service the specialist, the usual banker or some person with a special skill that we need, would come into our Foreign Service Reserve Corps, and not become a participant in the system, but would participate in the civil service system and then go back out again.

Mr. HARDY. Under this procedure it would be possible for a person to have had 4 years in the military service, and 1 year in one of these grades, and then retire and draw an immediate annuity?

Mr. BLANDFORD. No, sir.

5811

Mr. WOODYEAR. No, sir. He must have had at least 5 years of civilian service before he can credit any military service.

Mr. HARD. I reckon he can count his service in civil service.

Mr. WOODYEAR. The same thing in civil service.

Mr. HARDY. I mean he could have 4 years in civil service and have 1 year in this operation.

Mr. WOODYEAR. It is possible.

Mr. HARDY. That is what I am talking about.

Mr. WOODYEAR. But unheard of as far as I know.

Mr. WILSON. Mr. Chairman.

Mr. RIVERS. Wait, now, Mr. Gavin, are you finished?

Mr. GAVIN. Yes.

Mr. RIVERS. I have to go down the line, Mr. Stratton.

Mr. STRATTON. Go ahead, Mr. Chairman.

Mr. RIVERS. Mr. Bennett.

Mr. BENNETT. I just have a very brief question.

About how many people do you estimate would this apply to? Theoretically, how many could it apply to?

General CARTER. Less than a third, probably closer to a quarter of our personnel will be eligible for the provisions of this proposed system.

All the remainder will be under standard civil service retirement.

Mr. RIVERS. Mr. Bennett, have you finished?

Mr. BENNETT. That is all.

Mr. RIVERS. I think it would be helpful to the committee, General, if you would have somebody insert in the record what are some of the requirements that make these people so special.

And there are adequate reasons, I am sure. You take a specialist, that your personnel man has referred to, whose services you seek, and who has a distinguished background in some other area of life, whom you need very badly in some part of your service. I think if we could have an explanation of these it would help the committee understand what is the reason for this.

There must be adequate reason.

Mr. BATES. Mr. Chairman.

Mr. RIVERS. Do that a little later, because Mr. Bates has a question.

I think at some time we ought to have that. Don't you think so, Mr. Blandford?

Mr. BLANDFORD. Yes, sir; I think we should.

Mr. RIVERS. Such as in language, and various things.

General CARTER. Some require technical competence or very high skills that we cannot develop in our own training programs—certain physicists, for example.

But the provisions of this particular part of the act as to GS-14's: I can't name you a single person now in the Agency who at the moment would be eligible for it because of the requirements that will be established by the Director for eligibility for this type of retirement.

Mr. BATES. Mr. Chairman.

Mr. RIVERS. Mr. Bates.

Mr. BATES. I wonder if we could get the number of those who came under this in Foreign Service? How many are you actually paying for it at this time?

Mr. WOODYEAR. Under the entire system?

5812

Mr. BATES. Under this 5-year provision in the former service today.
Mr. WOODYEAR. That would apply only to our classes 1 through 3 officers.

Mr. GAVIN. I wonder if the gentleman would talk louder. We can't hear.

Mr. WOODYEAR. That would apply to our classes 1 to 3 officers.

I would say on the average, since 1948, when we began applying the selection-out principle, there have not been more than 2 percent that were officers in those classes selected out. They would average 500. So 10 per year may have been selected out under that provision.

Mr. GAVIN. This is being selected out, but not under the 5-year provision?

Mr. WOODYEAR. The 5-year provision would not apply otherwise unless you had disability retirement, where there would be an entirely different principle involved.

Mr. GAVIN. Well, I am talking about those who have not close to 20 years but those closer to 5 or 6 years. How many do you have of that?

Mr. WOODYEAR. The only instance in which retirement benefits would apply to an officer with 5 years' service would be if he were selected out.

Mr. GAVIN. The thing I am trying to get clear in my mind: The justification being presented by CIA is so they can attract a certain type of individual. It is not the question now of getting people out of service, as attracting this rare individual into the service. Now, you have had no cases in that particular category that have retired under the 5-year provision; is that correct?

Mr. WOODYEAR. No; that is not correct, sir.

Mr. GAVIN. Well, then, give it to me.

Mr. WOODYEAR. We have an average of at least 10 per year who have been retired involuntarily through selection out under that provision.

Mr. RIVERS. With 5 years' service?

Mr. BATES. You see, now, you are talking about selecting out. You are talking about getting rid of people. Now, that is what you are talking about.

CIA is talking about a different kind of individual, and predicates their case upon getting the head of this company, or getting this particular individual who has got rare qualifications—to get him to serve for a short period of time, up to 5 or 6 years, or something like that. You are talking about unloading people. That is a different situation.

Mr. WOODYEAR. I have to, because in the overall picture this is an incentive for recruitment.

The entire retirement system is an incentive for recruitment and retention. But it does not apply in the Foreign Service. We don't attract people to the Foreign Service because they can expect selection out with 5 years' credit and thereby get an annuity.

Mr. BATES. So your answer is "None"?

Mr. WOODYEAR. None.

Mr. BATES. That is all I am trying to get.

Now, I would like to get to CIA. Now, let's be frank about this section. Now, you went over and you selected the Foreign Service system as the one you think would be best adaptable to your particular section; that is correct, isn't it?

5813

General CARTER. Yes.

Mr. BATES. Now, is it true or not true that you came to this section and said, "Well, there it is, it looks pretty good, we will throw that in there." I mean, did you really have any need for it, or did it just happen to be one of these things where you talked about something that just happened to be in another bill? Is that the way it was, or ahead of time did you really have a need? Have you anything to justify it? Is it because it happens to be in somebody else's bill or is it something for which you really have a need?

Mr. RIVERS. Mr. Bates can really get to the meat in the coconut.

General CARTER. It appeared to be a potentially useful instrument which was available to the Foreign Service, and since our people are operating under the same circumstances, we included it.

Mr. BATES. In other words, how could we use it? And this is a pretty good justification.

All right.

Mr. BLANDFORD. Well, Mr. Chairman, there would be a difference here in this respect, that it is almost impossible, I would presume, for a Foreign Service officer to get to be a class 1, 2, or 3 officer, with less than 10 years. Because you have a system under which you appoint people as a class 7 and they work up, isn't that right?

Mr. WOODYEAR. We appoint them at class 6 usually, and they work up. Usually an officer in the class 3 would be at least age 40.

Mr. BLANDFORD. So he would have roughly 15 years of service by the time he gets to be a class 3 officer?

Mr. WOODYEAR. At least that.

Mr. BLANDFORD. So the point—I think this is the point Mr. Hardy made to start with, that your Foreign Service officer in class 1 and 3 is a different person than CIA wants to recruit, say, from industry who might be 45 years old, and whom they want for a 5-year period, and they might put him in as a GS-14 to start with. So we are really making a comparison between two different things.

Mr. HARDY. Normally, that is correct.

Mr. RIVERS. Wait a minute.

Mr. Bates, do you yield—

Mr. HARDY. But it is the unusual situation that makes it complicated.

Mr. WOODYEAR. Could I make one point, Mr. Chairman?

Mr. RIVERS. Yes, go ahead.

Mr. WOODYEAR. I am not attempting to testify in behalf of CIA's proposals. I am trying to explain the Foreign Service system.

But a selection out system which is applicable to all classes of officers, in our case classes 7 through 1, and in CIA's case class 7 through 15, is not complete unless you have this provision relating to classes 1, 2, and 3. If you are going to have a selection out system, we have found it desirable—we haven't yet sought an amendment to change it—to have this difference.

The career man who has spent 15-20 to 25-30 years in the service, and is selected out, we feel is entitled to an immediate annuity because of his term of service. The younger officer, usually 40 or below, can make an adjustment and find other employment. We feel he is entitled to a deferred annuity, which he receives at age 60, rather than at 62, as is true in the general service.

5814

I don't see how you can have a selection out system, if that is going to be used, and separate this and change the formula. It could be done, but it would not be desirable.

Mr. RIVERS. Does that complete your statement, Mr. Woodyear?

Mr. WOODYEAR. I beg your pardon, sir?

Mr. RIVERS. Are you finished?

Mr. WOODYEAR. Yes.

Mr. HUDDLESTON. Mr. Chairman.

Mr. RIVERS. Mr. Huddleston.

Mr. HUDDLESTON. General Carter, correct me if I am wrong, but the problem that CIA faces is in connection with the involuntary retirement of personnel through this selection out process, that that is the real meat and the crux of this legislation. The rest of it, as far as the optional retirement and disability retirement—that is more or less of a liberalized retirement program, a little window dressing, so to speak, to be added to the civil service provisions that are now applicable to CIA employees, but that the real problem that CIA has involves this very selection out process. That is the major problem in connection with the retirement program; is that correct?

General CARTER. Yes, I think—it is correct to this extent, sir. We are talking about involuntary retirement throughout, involuntary in that the final decision will rest with the Director whether or not to accept an application for retirement. So to this degree it is perhaps involuntary, since it is not a privilege or a right that goes along with the particular individual.

As I indicated previously, I have been through a very, very painful exercise in relieving the Agency of about 125 people. We started out with some 158. We were able to relocate some within the Agency. We were able to relocate some within other elements of the Government. But we finally got down to where there were 125 people that had to be released from our employment as being surplus to our needs in their particular skills.

This was involuntary on their part. Some of them got a very minimum civil service retirement. Others were given separation allowances which would carry them for a year or a year and a half while they sought other employment. But unless they had had long periods of service, they weren't eligible for any sort of civil service retirement that would give them anything to hang their hat on or to continue living until getting other employment.

Mr. HUDDLESTON. So the main thing that CIA wants this committee to do is to provide some statutory authority for the release of these people with short tenures who would not be eligible for a civil service retirement that would enable them to subsist—those people who have been released, and so forth, as a result of this selection out process.

It seems to me that the major point in this whole legislation is what the committee is going to do about these people who have been selected out. Do you think that is the major point in the whole bill?

General CARTER. No, sir; I don't think this is the major point.

Mr. HUDDLESTON. Well, what is the major point?

General CARTER. It is a part of it.

We are trying to provide a retirement system for a man who has performed his mission and met all of our requirements basically and at age 50 has passed beyond the ability to work for which we have

5815

a requirement—in other words, because of the nature of his occupation, and because of all the various nuances of the tasks that we assign him to. Mind you, this is not our entire personnel strength by any means. It is a maximum of about 25 to 30 percent of our people.

So that we are talking about this rare breed of cat who is serving overseas under these strenuous circumstances, over long periods of time, in operational activities. That is what we are talking about.

Mr. HUDDLESTON. And he would be the one that would be selected out?

General CARTER. And at age 50, when we bring him back here, we have extreme difficulty in placing him in another position where we can utilize those particular talents that he has developed over the years.

So he has got to get himself completely reoriented and start out doing something else, which probably will be at a lower pay scale than anything he had had up to now.

Mr. HUDDLESTON. So the major point in this bill, then, is the granting of authority to retire at age 50 with 20 years of service?

General CARTER. Yes, sir.

Mr. HUDDLESTON. That is the major point?

General CARTER. That is the major point.

Mr. GAVIN. After they have served how long?

General CARTER. Twenty years, sir.

The major point is 20 years—

Mr. GAVIN. Where does this 5-year separation come in, where the specialist is a qualified person?

General CARTER. This is an involuntary retirement and applies only to grades GS-14 and above.

Mr. RIVERS. Strictly involuntary.

General CARTER. Strictly involuntary. They must have served 5 years.

And I would hesitate to try to give you an example of a man like that, unless—well, we have none that I can think of in the Agency now, but it is a tool of management which is part of a complete program for early retirement as well as for handling forced attrition.

Mr. RIVERS. Can you live without it?

Mr. BLANDFORD. Mr. Chairman, may I make a suggestion on this, in this respect.

Really, compared to the overall bill, this is a relatively minor part.

Mr. HARDY. Yes.

Mr. BLANDFORD. But what we could very easily do is to restrict numerically the number of persons that the Director could retire in any one year under this provision.

Now, you are really talking about not more than a half dozen a year at the most, I would think, who would be GS-14's and above. Why couldn't we put a limitation in, right in the bill, itself, which would then at least indicate there cannot be any abuse of this.

Mr. HARDY. That would be one—

Mr. GAVIN. Pardon me—

Mr. RIVERS. Wait, let's stick to the order.

Mr. Huddleston has the floor. Let's finish with Mr. Huddleston first.

Mr. HUDDLESTON. I have finished, Mr. Chairman.

5816

Mr. RIVERS. Now, there are other people asking for the floor.
(Aside to Mr. Gavin.)

Mr. RIVERS. Go ahead, Mr. Gavin.

Mr. GAVIN. These people who reach the age of 50 and have served 5 years, and you have no further use for their particular ability, whatever it may be. Supposing they had only served 2 years of the 5, would you involuntarily retire them?

General CARTER. We would involuntarily separate them.

Mr. GAVIN. You have no other place for them and they are just there. What are you going to do with them?

General CARTER. We would separate them, sir, but they would not be retired. In other words, we would separate them with a separation allowance, which is very, very modest.

Mr. RIVERS. They just don't fit in your organization.

General CARTER. No retirement whatsoever.

Mr. BLANDFORD. They get 2 months' pay, Mr. Gavin, is what would happen.

Actually, you have two swords here. First of all, if these people were GS-13's and below—that is the first key—they would get a month's pay for each year of service.

If they had a total of 5 years of service or more—just like in all civil service retirement—they would get a deferred annuity which would be payable to them at age 60.

The only addition that they would get by working for CIA would be 1 month's separation pay for each year of service. So the man you are talking about with 2 years of total service would get nothing.

The GS-13 and below who had 5 years of service—the GS-13 and below with 5 years of service would get 5 months' basic pay, or 5 months' pay, and then he could draw his money out of the fund, or at the age 60 would have a deferred annuity. In other words, he could wait until he was 60.

Now, the man who was a GS-14 and had 2 years of service: There isn't any provision to even give him separation pay as I see it in this bill.

General CARTER. That is right.

Mr. BLANDFORD. This GS-14 would have to have——

Mr. RIVERS. The minimum.

Mr. BLANDFORD. A minimum of 5 years of service, and then he would get an annuity under this provision based upon 2 percent for each year of service, which would mean that he would get with 5 years, say, 10 percent of \$18,000, which would be \$1,800 a year for the rest of his life. But he wouldn't get any separation pay. There wouldn't be any deferred annuity. He would draw an immediate annuity at that point. That is for the GS-14 and above.

But all things being equal, are there going to be a relatively few of these GS-14's and above? And I suspect that what they are really talking about here is that they might want to take, say, the head of a company who is 45 years old and who has a particular skill that they want over a period of, say, 4, 5, or 6 or 7 years. Now, the bait to attract that man to leave his company is to say to him "We don't know how long we will use you, but if you stick with us for 5 years or more we will put you in as a GS-14, which gives you a good salary to start with. Now, if you stay with us for 5 years or more, and we suddenly decide that this program that you are the head of will be terminated, we can

5817

offer you a limited annuity which will amount to 2 percent of your basic pay for each year of service provided you had 5 years of service."

That is all this boils down to.

General CARTER. That is right, that is all it does; yes, sir.

Mr. HARDY. Of course—excuse me.

Mr. STRATTON. Mr. Chairman—

Mr. RIVERS. Wait, now, let me go to Mr. Wilson.

Mr. WILSON. Even if he retires at 5 years, it is a relatively small annuity.

General CARTER. That is right.

Mr. WILSON. It says "Annuity not reduced." But in effect it is a very minor annuity, because he has only 5 years' credit.

I might point out that Congressmen, who also face severe hazards, have a system where after 6 years of service they have an annuity. It is deferred until 65 or 62—

Mr. RIVERS. It is reduced.

Mr. WILSON. But we have the same provision for relatively short service.

But, of course, if we retire after only 6 years' service we get a relatively small annuity, too.

Let me ask you one question, General Carter: You mentioned in your first summary of the need for this system, that this was to make more adequate provision for certain of its employees who should be retired at an early age. Now, how do you differentiate between—as far as the retirement system is concerned—between those employees that are actually out in the field, and those who are over across the river, in their career? Are they under a different retirement system?

General CARTER. They are not now, sir. They are all under civil service.

Mr. WILSON. All right.

Now, I know you don't want to talk numbers, but what percentage of your total employees might be covered by this new system?

General CARTER. I would say between 25 and 30 percent.

Mr. WILSON. Twenty-five to thirty percent?

General CARTER. Of our employees; yes, sir.

Mr. WILSON. Now, is this a contributory system as far as the employees are concerned?

General CARTER. Yes, sir. Six and a half percent of their pay per month.

Mr. WILSON. In effect, what you are trying to put into effect there is a system like the military, where you select out the company grade officers because you cannot use them as they get older. You need a lot more people coming into the operation. And by offering a retirement system that lets him out after a given number of years of service you can keep that fresh supply of new young people coming in for the jobs that you have to do.

I don't even find any fault with the system that Mr. Hardy frowns upon here. I still feel, as you have explained here, that it is a reasonable thing to do, to give them an immediate annuity in that category of FSO-1 to 3.

Mr. STRATTON. Mr. Chairman—

Mr. WILSON. I am through.

5818

Mr. STRATTON. Mr. Chairman.

Mr. RIVERS. Mr. Stratton.

Mr. STRATTON. Mr. Chairman.

On that same point, the term "selection out," General, is usually one that has certain derogatory overtones. If I understand this proposal of yours—my understanding is the same as Mr. Wilson's—is it a fair assumption to say that what you have in mind here is trying to bring into the CIA an expert. This is somebody who is a highly trained individual. Obviously you have to pay him well to bring him in. Now, if he goes to work, let's say, in Moscow, the possibility is that in 5 years he will have been discovered and his usefulness to you will have been at an end.

But if in this process he, let's say, has succeeded in putting a microphone in Khrushchev's bedroom or his conference room, or something of that sort, his contribution to the country has been invaluable. And at the end of this period you have to select him out, not because he goofed, and not because he is a square peg in a round hole, but simply because of the nature of your operation this is bound to be a fairly short-lived deal, and yet he has made such a major contribution that you feel that he is entitled to a decent retirement. Isn't that the kind of thing you really have in mind when you talk about involuntary retirement?

General CARTER. Well, if he is in for only 5 years, sir, the annuity that he receives is very marginal, very marginal, no matter what rank he comes in as.

Mr. STRATTON. I mean, we had an objection made here to letting anybody retire on 5 years. It was my understanding that what you were trying to do was to protect somebody who for certain circumstances had to be selected out after 5 years. And I am saying that what you mean, if I understand what you are saying, is not that he proved to be a goof at the end of 5 years, but that because of the nature of your operation he might have been discovered and therefore was completely useless to you, and yet had done a terrific and an outstanding job in simply the short period of 5 years.

General CARTER. Well, I couldn't disagree at all with that concept; no, sir; it is the other side of the coin.

Mr. STRATTON. Isn't this really what you are trying to say to us?

General CARTER. Yes, sir.

Mr. STRATTON. And we are talking in terms of the Foreign Service, where—I am not an expert in it, but where I would assume that what we are talking about there is that somebody proves in 5 years that he just doesn't click and so they have to get rid of him.

And this is the kind of thing that Mr. Hardy is objecting to.

But when you get into the CIA, it would seem to me that it would be an entirely different kettle of fish.

Mr. GAVIN. Mr. Chairman.

Mr. RIVERS. Wait a second.

We are going to explore all of these things. We are not going into this thing with snap judgment.

Mr. GUBSER. It seems to me, General, that we have skirted all around the basic issue involved in this 5-year immediate annuity business. Isn't it an added inducement for extremely well qualified technical people with an especially needed critical skill to accept

what is very apt to be a short tenure of employment? Isn't it an inducement, more than anything else?

General CARTER. I think there is no question but what it would act as an additional inducement.

Mr. GUBSER. Well—

General CARTER. Yes, sir.

Mr. GUBSER. I wanted to comment on the suggestion made by Mr. Blandford; namely, that we restrict the number who could benefit from such an annuity in order to be sure that it is not abused. And if you will forgive me, I would like to construct a hypothetical case here.

Let's assume that we have a nuclear test ban agreement, and the Senate ratifies it. And let's assume that that creates a need in the CIA for some extremely well qualified scientific people who operate surreptitiously in order to determine whether or not the test ban agreement is being adhered to. You have a sudden demand for perhaps as many as 50 of these men. I think that is probably not inconceivable.

Wouldn't it be to your advantage to be able to offer them or let them know that at the end of the 5 years that they could retire on small pittance of annuity?

General CARTER. Yes, sir.

Mr. GUBSER. Wouldn't that be an added incentive?

General CARTER. Yes, sir.

Mr. GUBSER. And wouldn't a shortage of 5 or 10 or 15 people there severely handicap you in recruiting people of that type?

General CARTER. Well, under the terms of your hypothetical proposition; yes, sir; that would be a handicap.

Mr. GUBSER. Mr. Chairman, I just would like to suggest that this is an unusual Agency and a rather delicate one, and I don't think that this particular thing is serious enough that we ought to let it be a stumbling block.

Mr. HARDY. Well—

Mr. RIVERS. We are not going to let it be a stumbling block.

But I don't want the CIA to think that we are skeptical. We recognize the almost imponderable area in which you have to operate.

Mr. GAVIN. Mr. Chairman.

Mr. RIVERS. Let me finish.

And we are here to work out these things for the good of the Agency. And we want to help it. And we want to explore everything. That is why these questions are being asked. I can think—I have in mind another Francis Gary Powers, if indeed you have requirements for another one. There are a lot of areas in these things. Despite the high salaries you are compelled to pay.

What we want is results. We can't look at these things from a budgetary standpoint, on which maybe the fate of the Republic may hang, we don't know. I think there are a lot of things here that we are going to have to pay attention to. I don't think it is so vital now that we want to overlook the other things and spend so much time on this. We can work out something on this.

Now, Mr. Hardy, you want to say something?

5820

Mr. HARDY. Mr. Chairman, I didn't mean to prolong the discussion like this. This is apparently one minor provision in this thing.

Mr. RIVERS. That is right.

Mr. HARDY. But there are other aspects in there that disturb me more than what Mr. Wilson or Mr. Stratton had in mind.

I think we can work it out.

Mr. RIVERS. Certainly.

Mr. HARDY. I don't have a serious problem with this. We are not talking about people who serve only 5 years. We are not talking about people who necessarily come in at a high level. We are talking about people who go out on service from 5 to 19½ years. Actually, that is what we are talking about.

And you could have somebody who comes in with a GS-6 and gets up to a GS-14, and then is immediately involuntarily separated. He might have had 15 years of service, and he might be 40 years old. And he would be out on that basis with a full retirement, not reduced at all, continuing for his lifetime. Now, I think—there are a lot of aspects of this thing that we are going to have to explore.

And I wouldn't suggest we do it here, except I think maybe there is one other thing we ought to point out. This would be a separate retirement service from other Government retirement services. It would be separate from your military retirement. And the fact that the State Department has it doesn't commend it to me a bit.

But it would be separate from the military retirement. It would apparently be separate also from civil service retirement. I don't know whether you have a provision under which a person could retire from civil service or retire from the military—he can retire from the military with 20 years' service at age 40, some of them were doing it—and come in under this thing, and get in another 5 or 10 years, and go out at age 50 with an entirely added on retirement.

I don't believe CIA needs that kind of inducement to recruit its people. You have a lot of other inducements to go along with it.

We are talking about a retirement system here now. And this is something that we have to work out. I don't care to pursue it further at this stage, Mr. Chairman. It is just one little facet of this bill, but I think it is something we have to look at and look at very carefully.

Mr. HUDDLESTON. Mr. Chairman, one brief question.

Mr. RIVERS. Yes.

Mr. HUDDLESTON. General Carter, at the top of the chart is the statement "Optional retirement, immediate annuity, age 50 at 20 years." Now, at whose option is that retirement?

General CARTER. That is at the individual request of the employee, but only with the approval of the Director.

Mr. HUDDLESTON. Now, then, that is the provision that has as its purpose getting rid of these wornout types who have rendered good service, but who have lost a considerable amount of their motivation.

General CARTER. You are talking about the fellow who has to retire because of motivational exhaustion or family problems?

Mr. HUDDLESTON. Yes.

General CARTER. This sort of operation; yes, sir.

Mr. HUDDLESTON. And that is the provision that would apply to him.

Now, that is purely voluntary on his part?

Mr. ECHOLS. Right.

General CARTER. Yes, sir.

Mr. HUDDLESTON. How will that accomplish the purpose for which it is intended? Except it would be an added inducement for him to retire. But if he refused to retire, then what recourse would you have?

General CARTER. Well, the Director may at his discretion, if he has reached the proper age and service under this new proposed system, retire him.

Mr. HUDDLESTON. He can retire him at age 50?

General CARTER. Yes, sir; with 20 years' service, whether or not he wants to retire.

Mr. HUDDLESTON. In other words, it is not only at the option of the employee, but it is at the option of the Agency, also?

General CARTER. Yes, sir; option of the Director.

Mr. HUDDLESTON. Well, then, the chart that was on before said that the mandatory age of retirement was 60—the chart that was up there first.

General CARTER. Yes, sir. That is mandatory, sir, and that is the age beyond which he cannot be employed.

Mr. HUDDLESTON. So it is mandatory at age 60, but optional on either side, either the employee or the Agency, at age 50 with 20 years of service.

General CARTER. Well, it is optional on the part of the Director in both cases. It is optional on the part of the employee, providing the Director opts also, or accepts the option.

Mr. HUDDLESTON. At age 50 with 20 years' service?

General CARTER. Yes, sir. It is really a discretionary authority on the part of the Director.

Mr. HUDDLESTON. And so the Director can compel retirement at age 50 with 20 years' service?

General CARTER. Yes, sir.

Mr. HUDDLESTON. If he is fit?

General CARTER. Yes, sir.

Mr. HUDDLESTON. Thank you.

General CARTER. We have right now under the civil service system a Board of Officers, senior officers, which reviews all of our personnel who are eligible for retirement within the next 2 or 3 years. And they meet periodically and go over these cases. And then they advise that officer, again with the approval of the Director, just what his chances are of being held on beyond the normal age of retirement.

So that he has information within 2 years before he might normally be eligible for retirement whether or not his capacity is such that he will be kept on.

Mr. HUDDLESTON. And if this bill is passed, then that would be age 50 with 20 years' service?

General CARTER. Yes, sir; it could be.

Mr. RIVERS. Mr. Huddleston, are you finished?

General CARTER. Providing he met all the other requirements of this limited group of employees for whom this legislation is designed.

Mr. HUDDLESTON. I am finished.

Mr. RIVERS. Now, Mr. Gavin, did you have a question?

Mr. GAVIN. This extraordinary person that you propose under this 5-year system: Supposing his work is completed in 3 years, and he leaves the profession, that he has well established. Do you think he is going to come in for the limited time that you might require—and say it would be 3 years—for the particular purpose, that you may require him, and be satisfied with the annuity that you are going to pay him after he leaves a very responsible position that may have taken years to secure?

General CARTER. Well, I think the choice, sir, would be up to the individual circumstances for each person.

Mr. GAVIN. Whether or not he would accept—

General CARTER. It is some incentive, sir. It is some incentive, and not a great deal.

Mr. GAVIN. Well, if you required a professional man for a certain particular assignment, and that assignment had been completed, and you had no further use for him, do you think he would be satisfied with the annuity that he would receive after 3 years, to leave his present position to come in to render a special service for you, or your department?

General CARTER. We would not normally take that type of person on as a staff employee, sir. We would take him on as a contract employee or a contract agent, and hire him for an annual or a 3-year contract at reasonable scale, as we hired the U-2 pilots who were on contract. And then when their services are over, we are free of them. We have no retirement or annuity responsibilities at all.

Mr. RIVERS. This would be strictly a special contract?

General CARTER. A special contract; yes, sir.

Mr. RIVERS. Now, Mr. Blandford, you have a letter there—before we recess.

Mr. BLANDFORD. Yes, sir.

Mr. RIVERS. We can't meet this afternoon because we have a bill on the floor.

Mr. BLANDFORD. All right, sir.

I think I should read so that General Carter and others can take the appropriate action.

Mr. RIVERS. Now, I want you all to hear this.

Mr. BLANDFORD. The letter is addressed to the chairman, Mr. Vinson, from the Committee on Ways and Means:

Hon. CARL VINSON,
Chairman, Committee on Armed Services,
U.S. House of Representatives

MY DEAR MR. CHAIRMAN: It has come to the attention of the Committee on Ways and Means that H.R. 7216, which you introduced at the request of the administration, and which would amend the Central Intelligence Agency Act of 1949, contains provisions relating to the Internal Revenue Code. It has been the practice of the Committee on Ways and Means in such cases to request the committee concerned that it not act on provisions within the jurisdiction of our committee until we have had an opportunity to review the provisions and submit to the committee concerned whatever action the Committee on Ways and Means feels should be taken on the particular provision.

Some of the better known examples, of which you are not aware, are: The Federal highway program (Committee on Public Works), wherein the Ways and Means Committee handled the highway trust fund provisions; the Peace Corps legislation (Committee on Foreign Affairs), wherein our committee handled the tax and social security provision; legislation relating to the

5823

Silver Purchase Act (Committee on Banking and Currency), wherein the Committee on Ways and Means handled the tax features; and more recently, the land and water conservation legislation (Committee on Interior and Insular Affairs), wherein we handled the tax provisions.

In line with this policy of the Committee on Ways and Means, this letter is to request that you permit our committee to review the tax provisions of H.R. 7216 and submit to you whatever our suggestions may be as to these provisions. It has been our practice in such cases to recommend that a separate title be written in a bill concerning those matters within our jurisdiction on which we make recommendations. We write the language which we suggest on such separate titles, as well as the report language on them. In the past, where the committees to whom the overall legislation has been referred see fit to accept our suggestions, they have reported their legislation using our suggested statutory language and report language. I am enclosing for your information a copy of the report on H.R. 6713 of the 87th Congress, the Federal Aid Highway Act of 1961, as an example of this procedure (see p. 13).

We always make every effort to consider the part of the legislation of interest to us expeditiously, so as not to delay in any way the schedule of the committee to whom the overall legislation has been referred.

Sincerely yours,

WILBUR D. MILLS,
Chairman.

JOHN W. BYRNES,
Ranking Minority Member.

Mr. Chairman, I discussed with Mr. Irwin of the Ways and Means Committee this morning this bill, and indicated that our schedule at this time was to complete the subcommittee hearings this week, by Thursday, and report the bill to the full committee by Tuesday.

I would like to suggest, therefore, that the CIA representatives take this bill, H.R. 7216, discuss it immediately with the Ways and Means Committee, and try to work out a separate title and a separate report which the Ways and Means Committee can approve, which then could be—we could strike out the Internal Revenue language in 7216, add a separate title with whatever they approve with regard to the Internal Revenue Code, and report the bill with their suggested language, and their suggested report language, which would comply with their request. Because we are in their jurisdiction in two areas, to the best of my knowledge, one on disability retirement and the other on gifts.

General CARTER. Yes, sir; we will undertake to do that immediately.

Mr. RIVERS. Why don't we follow that course and see what comes out of it.

Mr. BLANDFORD. Yes, sir.

General CARTER. Yes, sir.

Mr. RIVERS. You can get them to do that today.

General CARTER. I am sure, if we can get right at it.

Mr. BLANDFORD. I am sure it can be brought to their attention today.

And they ought to have something to bring back to us certainly by next week.

Mr. RIVERS. Let us do that.

Have you finished your statement?

General CARTER. Except for disability retirement, sir, which we can—

Mr. RIVERS. We had better get to the floor. I don't think that will—

General CARTER. Yes, sir.

5824

Mr. RIVERS. Why don't we recess until 10 in the morning, General?

And if you could be back then, I think we can get moving.

Mr. BLANDFORD. If everyone will leave—

Mr. RIVERS. Now, everything be left.

Mr. BATES. Is this [displaying document] the only thing that is classified?

Mr. HOUSTON. Yes, sir.

General CARTER. Yes, sir.

Mr. BATES. The rest of it is all right?

Mr. HOUSTON. Yes, sir.

Mr. RIVERS. Thank you very much, gentlemen.

Mr. CARTER. Thank you, Mr. Chairman.

(Whereupon, at 11:52 a.m., the subcommittee adjourned until Wednesday, July 24, 1963, at 10 a.m.)

HOUSE OF REPRESENTATIVES,

COMMITTEE ON ARMED SERVICES,

SUBCOMMITTEE No. 1,

Washington, D.C., Wednesday, July 24, 1963.

The subcommittee met at 10:50 a.m., Hon. L. Mendel Rivers, chairman of the subcommittee, presiding.

Mr. RIVERS. Let the committee come to order.

General Carter, if you will start your statement.

Have we got any more copies of this?

General CARTER. Yes, sir.

Mr. HOUSTON. Yes, sir.

Mr. RIVERS. I would like for the other members to have them.

Mr. HOUSTON. I will give them out.

Mr. RIVERS. Go ahead, General Carter.

General CARTER. Mr. Chairman, the Agency is represented by the same people who were here yesterday, and also Mr. Woodyear from the State Department, who is the expert on the administrative and personnel actions in connection with their legislation.

Yesterday, in compliance with the chairman's instructions, the staffs met with the House Ways and Means Committee, and tomorrow we will have a hearing with that committee which will be handled by Mr. Houston.

At the moment we do not anticipate any difficulty with the Ways and Means Committee.

Mr. RIVERS. Good.

General CARTER. When this subcommittee recessed yesterday I had been discussing the involuntary retirement provisions of the proposed CIA retirement system—in particular the feature of this proposal which would permit the payment of an immediate annuity to an employee in grade GS-14 or above who is involuntarily retired or selected out, after 5 or more years of service.

A number of points came up in this discussion, and with your permission I would like to start today by describing some of the main considerations involved.

Both under the Civil Service Retirement Act and the Foreign Service Retirement Act an employee who has at least 5 years of service has earned a deferred annuity if he leaves the service before reaching optional retirement age.

5825

Under our proposed system the same entitlement to an annuity is earned.

The novel feature of the provision, therefore, is not the individual's entitlement to an annuity. The question is whether this annuity should commence immediately upon the involuntary retirement of an officer at GS-14 or higher or whether it should be deferred.

We believe that an immediate annuity is warranted for the employee in GS-14 or higher who is retired involuntarily. Officers at this grade level, almost without exception, will be at least middle aged and at a considerable disadvantage in beginning new careers. Depending on the number of years he has served, such an officer would receive an annuity of 2 percent per year of service which would provide at least supplemental income permitting him to take other, perhaps less remunerative, employment.

I think it would be timely to describe the career management of the particular group involved in this early retirement system we are proposing, and to show how unlikely it would be that there would be involuntary retirements at the GS-14 level with less than 10 or 15 years of service, except in the most unusual and limited circumstances.

Mr. RIVERS. Now, if a man just had the 5 years, which would make him eligible, and he were a GS-14, how would the 2 percent per year come in?

General CARTER. If he were eligible for retirement under the criteria established by the Director for this limited number of people in the Agency?

Mr. RIVERS. Say he just got qualified, he just had the 5 years.

General CARTER. Yes, the 5 years. He would be eligible for an annuity amounting to 10 percent of his average salary over the preceding 5 years.

Mr. RIVERS. That is right.

General CARTER. That is his 5.

Mr. RIVERS. That is the way it goes.

General CARTER. Ten percent.

So if he was an \$18,000-a-year man—

Mr. RIVERS. Ten percent, he would get \$1,800.

General CARTER. He would get \$1,800 a year; yes, sir.

Mr. RIVERS. Five years, he would get twice that.

General CARTER. In 10 years he would get twice that.

Mr. RIVERS. I mean in 10 years he would get twice that.

General CARTER. Yes, sir.

Mr. RIVERS. And if we keep in mind it is always a GS-14 or an above with a minimum of 5 years, we understand this.

General CARTER. Yes, sir; that is correct.

This group which is subject to our retirement program—

Mr. RIVERS. Let me interrupt. Under your recommendation, there would be nothing deferred at all until they hit the 62, or whatever it is?

General CARTER. For GS-14's and above; yes, sir.

Mr. RIVERS. They would get it immediately.

General CARTER. They would start getting it immediately.

Mr. RIVERS. Because of the advanced age and so forth.

General CARTER. They are at least past middle age.

Mr. RIVERS. I understand.

General CARTER. Yes, sir.

5826

Mr. RIVERS. I understand perfectly.

General CARTER. The group subject to the retirement provisions of our program has a remarkable cohesiveness and tenure.

We have a recruiting program of young highly qualified people of average age in the middle 20's—of those we presently have in training the average age is 27. One happens to be 21. One is 35. But the average age of our junior officer trainees is in the 25-year group.

Mr. RIVERS. Now, when they come aboard—that is, when they come into the organization, after this training—what are they? GS what?

General CARTER. They will come in as GS-7's and 8's.

Mr. RIVERS. And what do you call these people when they come in?

General CARTER. We call these junior officer trainees.

Mr. RIVERS. Junior officer trainees.

General CARTER. And they are on probation with us for 3 years, after a very extensive training program.

The training consists of both special courses in the difficult and often unique arts of intelligence and their related fields, and on-the-job training in various divisions within the Agency.

As a rule, they are GS-7's and GS-8's.

Mr. RIVERS. As a rule.

General CARTER. As a rule.

They progress into regular assignments in their career service, depending almost entirely on promotion from within. Lateral recruitment—that is, going out and bringing them in—particularly at the higher grades, is most unlikely as the techniques and experience necessary to fulfill the larger responsibilities of our career staff officers are not generally known or practiced outside of the trained and experienced Agency staff people.

Mr. RIVERS. Say somebody were to come to a Member of Congress and say, "I would like to be considered for a job in the CIA." I have never experienced it, myself.

Mr. HARDY. Well, I have. But it doesn't help.

Mr. RIVERS. I know.

Mr. HARDY. If he comes to Congress, it doesn't help a bit.

Mr. RIVERS. Well, how do they do? Do they just turn them right over to personnel?

General CARTER. I didn't catch the last phrase, Mr. Chairman.

Mr. RIVERS. They write to the Director or the Chief of Personnel?

General CARTER. Yes, sir, they can write to the Director and it will end up with the Director of Personnel.

Invariably we interview them and find out if they have capabilities that we need, and in many cases we process their complete applications.

I might point out that a letter to the Director from a Congressman is no guarantee of employment.

Mr. HARDY. It sure isn't.

Mr. RIVERS. I know that.

General CARTER. As I say, a letter to the Director is no guarantee of employment.

Mr. RIVERS. Do you have some kind of an understanding with the FBI, for instance, as an area to get people, with their help?

General CARTER. We employ a number of people who were previously with the FBI.

Mr. RIVERS. I would imagine so.

5827

General CARTER. We have the closest relationship with the FBI particularly in ascertaining the security clearances of personnel before we take them on board.

Mr. RIVERS. Do you have any kind of agreements with any of the universities?

General CARTER. Yes, sir, we have a comprehensive recruiting system throughout the universities. And in fact, the junior officer trainees that we now have on board have come from 66 different institutes of higher learning. One-third of them have master's degrees or better. They are a very high-class group of people.

We have to do our recruiting somewhat quietly in that we don't advertise the type of work that they would be subjected to. But as soon as we have a college graduate or a young fellow who seems oriented in our direction, we get right with him and give him a better idea of the career that we can offer him in the agency.

Highly specialized skills needed on a temporary basis, as distinct from a permanent career basis, can be and we do acquire by contract or by reserve appointments. Neither one of these are eligible for the retirement provisions we are now proposing.

This indicates, I feel, that employees will not normally reach the grade of GS-14 unless they have had at least 12 or 15 years of service and in the career service.

The 5-year period which we discussed yesterday, therefore, is a repetition of the Government-wide principle that eligibility for retirement benefits commences only after the completion of at least 5 years of service, and in practice retirement at that time would not take place except under the most exceptional circumstances.

I would like to emphasize our basic concentration on the junior officer training program and the establishment of a career service in which people will remain throughout their Government service, progressing through the ranks.

Mr. HARDY. Well, what percentage of CIA employees would be covered by the liberalized retirement provisions that you have here?

General CARTER. Between 25 and 30 percent of our employees.

Mr. HARDY. All right.

General CARTER. Yes, sir. If at the time they are eligible for retirement they meet the criteria established by the Director, they are at all times eligible for the Civil Service Retirement Act.

Mr. HARDY. Yes; I understand that.

But you are getting right down to the point. And I think maybe Mr. Blandford should develop this more fully.

But you are getting right down to one of the key points in this whole thing.

What kind of guidelines or statutory guidelines are going to be provided to keep everybody in CIA from being eligible for this kind of coverage?

Mr. RIVERS. Let me take a whack at it——

Mr. BLANDFORD. That is the key to it.

Mr. RIVERS. Wait now. That is important.

Once you get into this career field you remain in it until you are out of the service, because you are always subject to recall to Washington for retraining and any staff job you have here would be deemed temporary.

Mr. BLANDFORD. Well, Mr. Chairman——

5828

Mr. RIVERS. Wait now.

Mr. BLANDFORD. That is not correct in this respect.

Mr. RIVERS. Well, it is the identical way with the State Department. You have Foreign Service officers.

Mr. BLANDFORD. Perhaps I can clarify some of this.

Mr. RIVERS. Isn't this right, General?

Mr. BLANDFORD. The problem that Mr. Hardy raises, and I think the problem that we have got to know the answer to, is this:

That is, this bill, stated by itself, says the Director will decide who will be in this retirement system and who won't.

What do you do with a man who after 6 or 7 or 8 years in this business comes back to Washington. His motivation is gone, or at least he has lost his desire to engage in such activities. So they give him an assignment in Washington.

And does the Director at that point say "Now we are taking you out of this retirement fund and you are going back under the civil service retirement fund?"

Now, the question is, does he get 2 percent for each year in those activities?

How do you handle something like this?

How do you put the brakes on the number of people that can come into this program? How do you handle the problem between the man who is in one operation, or one system, and then goes back into another one?

These are the things I think Mr. Hardy is trying to develop.

Mr. RIVERS. That was mine, too.

I figured once he was in it, he was in it.

General CARTER. No, sir.

Mr. BLANDFORD. Not necessarily.

General CARTER. No, sir.

The only time he is sure that he is in it is when adjudication has been made by our own Retirement Board and by the Director that he is in fact eligible for early retirement.

Mr. RIVERS. Well, if he has got 10 years' qualifying service and comes under this, he can come—of course he is already a GS-14. He can get out with 2 percent a year, as Mr. Blandford says.

Mr. BLANDFORD. He could, but he might want to continue as an employee of the CIA.

Mr. RIVERS. Take the 10 years over here under the special one, plus the 10 years over here under the civil service?

General CARTER. No, sir.

The deduction from his pay throughout his service is the same, 6½ percent.

Mr. RIVERS. Six and a half percent.

General CARTER. Yes.

It is not until his retirement criteria is actually determined that he knows whether or not he is eligible for these provisions.

Mr. RIVERS. Well, at the end of 20 years he will know.

General CARTER. If it is early retirement, he will have to request early retirement and be passed on by our Retirement Board and by the Director as having met these peculiar requirements.

Otherwise, he would retire under whatever civil service provisions are available to him.

Mr. RIVERS. Well, this is going to present a problem.

Mr. BLANDFORD. Well, it is a problem to this extent, also, Mr. Chairman:

Really, what you are asking this committee to do—it seems to me that what we are being asked to do here is to give to the Director of the CIA a great deal of authority to determine how he will operate two different retirement systems.

Mr. ECHOLS. Yes.

Mr. BLANDFORD. The only thing you can do is put faith in the Director and then future Directors, that they will not abuse the system.

The only way we can check on the system would be to have the CIA come back here at some future date and say, "How many people are now considered to be covered under this type of retirement?"

This is the only control the Congress will have over it. The way this bill is set up, you will get a separate appropriation for retirement from some source, in order to pay this.

General CARTER. That is right.

Mr. BLANDFORD. So therefore you are really asking for a great deal of authority comparable to the authority we gave you back in 1948, in which we said you could have unvouchered expenditures.

Now, actually, I suppose, in some respects you could do a great deal of this under the very general authority to spend funds without accounting for them.

General CARTER. I don't think it is quite this way, sir.

The authority we are asking for for 25 percent of our people is the authority which is already in existence for the entire Foreign Service.

So we are not asking for anything at all that has not already been clearly established and provided for for the large bulk of one agency which serves overseas.

Mr. BLANDFORD. That is right, General.

But the point is this. The Foreign Service officer is easily identifiable. He enters into the Foreign Service, and this is on a career basis for him. He is promoted or passed over. It is a promotion system.

He has a guaranteed retirement system which guarantees him that if he is still active in the Foreign Service at the end of 20 years he can apply for retirement.

I don't believe it is a vested right. I think it is up to the Secretary to decide whether he will retire or not retire upon the completion of 20 years.

Now, what you have done is to take the retirement system that best meets your needs—rather than create a brandnew retirement system, you have taken the Foreign Service Retirement Act and said, "Let us apply the best provisions of the Foreign Service Retirement Act to our own peculiar problem."

Now, nowhere in the bill is there a limit on the number of people that this can apply to.

You will have a problem that the Foreign Service officer does not have, and that is: you will have people going from one type of operation into a staff job in Washington.

This is bound to happen. You are bound to have people at the end of 10 or 12 years who will come back to Washington, and you will make them a branch chief, and they no longer, all things being equal—the Director in good conscience can't say, "Now, you are no longer

entitled to participate in this special retirement fund. You are going to come under the regular civil service retirement system."

Now, of course, when that happens, the individual may or may not have a choice. Because he is getting 2 percent for each year that he was covered under the special retirement system. And when he switches back over into the civil service retirement fund he drops down to 1½ percent, and he must then meet the civil service retirement qualifications.

And this is going to be a problem for CIA.

Whether or not the individual at that point, if he is a GS-14, should be allowed to take an annuity is one of the questions that is solved in this bill.

Mr. STRATTON. Mr. Chairman, could I ask a question?

Mr. RIVERS. You still have the floor, Mr. Hardy.

Mr. HARDY. Yes, but the whole thing is one that was left——

Mr. RIVERS. Let me say this.

Mr. HARDY. Go ahead.

Mr. RIVERS. Let me say this.

Why couldn't we take it at this point?

You are speaking for the employee's rights too, Mr. Blandford.

Mr. BLANDFORD. Yes.

Mr. RIVERS. He has the right to have his rights adjudicated.

Why shouldn't we put something in the act that a man in a changing status shall have the right to have his status determined at that point.

Mr. HARDY. Of course you are giving the Director the right to do almost anything he wants to.

Mr. RIVERS. I know. But the Director may not want to do it.

We have to give the employee some right. You see what I am talking about?

Mr. BLANDFORD. Yes, sir.

The problem—I can certainly appreciate why the language in the bill has to be fairly broad.

There will be problems that will come up here that if you attempted to control it by law it would be almost insurmountable, if you tried to solve every problem.

Mr. RIVERS. Right. You have to have a lot of discretion.

Mr. STRATTON. Mr. Chairman——

Mr. HARDY. If this thing becomes law as it is, it won't be very long before everybody in CIA will be covered under this program.

Mr. BLANDFORD. That is the problem.

The only way you can control it is by faith in the Director, really, and asking the Director to report back to the Congress the number of people who are in the program.

Mr. HARDY. You don't write good legislation that way.

Mr. BLANDFORD. No. But I don't know how else you are going to do that here.

Mr. HARDY. There is one other aspect.

I realize the point the General made a minute ago, that this already applies to everybody in the Foreign Service.

Yes, I realize that is so. But in my book it is wrong. And I don't think the Foreign Service ought to have as much latitude as they have got.

Mr. RIVERS. Well, we can't do anything about the Foreign Service.

This is the first time, I want you all to keep in mind, that we are trying to legislate for an organization that has not been a part of our American way of life since its inception. This is a new thing we have here.

Mr. HARDY. I think that is right, but——

Mr. RIVERS. This kind of work has just not been our business. And those whom we have in it we have to take care of.

Mr. HARDY. Yes, but we don't want to fall flat in trying to do it.

Mr. RIVERS. I was impressed with what Mr. Helms said.

Where did you come from?

Mr. HELMS. Where do I come from, sir?

Mr. RIVERS. Yes.

Mr. HELMS. You mean what did I do before I came in this work?

Mr. RIVERS. Yes.

Mr. HELMS. I was a newspaperman.

Mr. RIVERS. You see, you never got in the ground floor of the Foreign Service. They haven't accepted you yet. So you got your problems, too. And we got to recognize that you got problems.

And you have to recognize that we are not—this committee is not looking with suspicion on you gentlemen.

Mr. BATES. He is making good progress.

Mr. RIVERS. You are getting better all the time. The committee is warming up to you more all the time, as you can observe.

General CARTER. Mr. Chairman——

Mr. GAVIN. Mr. Chairman.

What happens to a Regular Army officer who is assigned to the Foreign Service? Is he entitled to any benefits or is he just with the Regular Army assigned to the State Department?

General CARTER. He is with the Regular Army and retains all of his military benefits.

If he chooses to leave the Regular Army and transfers to the Foreign Service and is able to accomplish this, then he comes under Foreign Service regulations.

Mr. GAVIN. Do you have many that come from the Regular Army that decide to transfer to the Foreign Service?

General CARTER. I know offhand of only one, sir—Ambassador Byroade has done this. He was a brigadier general in the Army. He resigned from the U.S. Army, and forfeited all of his—about 16 years of equity—and then took the Foreign Service examinations, passed them, and he is now the rank of Ambassador.

Mr. GAVIN. While he is still in the Regular Army, is he entitled to any special benefits that might accrue under this system you propose?

General CARTER. None whatsoever, sir. He is no longer in the military service at all.

And I served in the State Department for 3 years, but I was on the military payrolls, paid by the military, working for the Secretary of State.

Mr. STRATTON. Mr. Chairman.

Mr. RIVERS. Mr. Hardy, have you finished?

Mr. HARDY. Mr. Chairman, I am finished with this. If Mr. Stratton wants to pursue it?

I have some other points later on. But I will yield now.

General CARTER. Mr. Chairman——

Mr. STRATTON. Mr. Chairman. I would like to ask one question to clarify this.

This bill is requested for a limited number of your people. You have indicated to us generally the number of persons that it would apply to.

Now, do I understand that there is——

Mr. GAVIN. I wonder if you would talk a little louder. We can't hear you over there.

Mr. STRATTON. I didn't realize the other members of the committee were interested, Mr. Gavin. I would be very happy to.

Mr. BATES. Oh.

Mr. STRATTON. Do I understand that there is no actual distinction in any formal sense between an individual who is in this type of service and an individual who isn't?

In other words, you are not under any different register. You just happen to be performing a particular function at a particular time; is that right?

General CARTER. Well, sir, we have in the Agency a career service system, and this would be one of those career services.

Mr. STRATTON. Well, now, if a man is hired for CIA for such service, is he assigned to that particular service?

General CARTER. Yes, sir. This does not preclude his transfer at a subsequent date to some other position if he seems better suited to that.

Mr. STRATTON. Now, this is what I want to get clear.

When he comes back to Washington for a staff job, does he then—— is he then transferred out of that service?

General CARTER. No, sir. He remains assigned to that service, and his duty assignment is established based on need.

Mr. STRATTON. Then——

General CARTER. It is the same thing as in the military services, sir, where you have Signal Corps, Transportation Corps, Armor, and so on.

Mr. STRATTON. Exactly.

He comes back and, in a sense, is rotated for a little shore leave; is that right?

General CARTER. Yes, sir.

Mr. STRATTON. All right.

Then this would not mean that you would have people transferring in and out every time they came back here, and that as Mr. Blandford suggested a moment ago, everybody in CIA who might touch foot—— everybody in CIA might touch foot briefly in that service, and therefore everybody will become eligible for this bill.

If you operate the way you suggest, that wouldn't be true; would it, General?

General CARTER. Well, this is certainly not the way it would be operated.

I think Mr. Blandford's point was that the way the legislation is worded, if you had a director in whom you did not have faith, he could do this.

Mr. RIVERS. I think that is absolutely right.

General CARTER. I think that is Mr. Blandford's point.

Mr. BLANDFORD. That is all I am saying, General.

5833

Mr. RIVERS. That is right.

Mr. STRATTON. You have a particular category. The number of people that are in this category is known. It is a reasonably fixed number. And unless some shenanigans, that isn't going to be changed without some considerable knowledge of that fact; is it?

General CARTER. Well, some of the people, sir, even in that career service may never become involved in the type of activity for which this special retirement act is requested. Some of them may never.

On the other hand, we also have officers—

Mr. STRATTON. I don't understand that. Some people in this particular service may never become eligible for the type of coverage.

General CARTER. Yes, sir.

Mr. HELMS. May I explain this, Mr. Stratton?

[Deleted.]

Some analysts will probably never go overseas and will never live a life any different from any other civil service employee, even though they work in that career service and support that service they would not be entitled to the benefits under this retirement system.

Mr. STRATTON. But that would be an administrative decision.

Mr. HELMS. Correct.

General CARTER. That is correct.

Mr. STRATTON. Now let me ask one other question, if I may, while I have the floor.

General, you have indicated in your prepared statement here that actually the people who would be eligible for this retirement after 5 years or more of service would be in the nature of the case a very small number.

Now, the question, or the point that I was trying to make yesterday—and I am not sure that I made it clearly—I would like to ask you about again.

We are constantly referring to the term "selected out" or "involuntary retirement," and I think the parallel with the military service is the one that immediately comes to mind when you use the term "selected out." It implies that somehow an individual, an officer, has not quite measured up to the norm. He hasn't quite measured up to the specific requirement, and so he is "humped out," he is selected out, or what have you.

In your Agency is it not the case that people who might be selected out or involuntarily retired in this way would not necessarily at all be those who had failed to measure up, but who because of the peculiar nature of your work had found their usefulness coming to an end might be selected out but not necessarily because of any failure to measure up. Is that correct?

General CARTER. That is correct.

[Deleted.]

General CARTER. I think your analysis is correct, that this is a selection out for reasons other than poor performance of duty in most cases.

Mr. HOUSTON. That would be true of many of those 125.

General CARTER. Now as I said yesterday, I personally, and with great pain, relieved 125 employees last year within the Agency. [Deleted.] I reviewed every one of those cases myself, acted on them myself, and I tell you it was painful, because they were just surplus to our needs. They had skills, in the most part, that we no longer required.

5834

But about the only thing I could do for most of them was to give them about what amounted to a year's pay, 1 month per year of service, prior to their departure, and to assist them through our Director of Personnel in every possible way in getting them reemployed either in the Government or in civil life.

Mr. RIVERS. If you had had this act, that is, were this on the books at this time, you could have taken advantage of the selection out provisions of this?

General CARTER. I could have, sir, for those grades of GS-14 and above. And the bulk of them had service anywhere from 9 to 16 years.

I could have given them an immediate annuity. For those below GS-14, I could have given separation pay and an annuity at the time they retired at age 60—if they met the requirements as the Director might determine.

Mr. GAVIN. Over what period of time?

General CARTER. This will be, sir, at the discretion of the Director, based on recommendations established by the Retirement Board of the Agency.

This is no different from the determination that has to be made by the Federal Bureau of Investigation and other detection and law enforcement agencies who have the same privileges, of 50 and 20.

They can't determine whether a man is eligible until the time has come.

Mr. STRATTON. General——

Mr. RIVERS. Right there, Mr. Stratton——

Mr. STRATTON. Excuse me.

Mr. RIVERS. I just wanted to ask him: Did you get any part of this from the FBI Act?

General CARTER. No, sir. There is not what amounts to an FBI Act, as such.

Mr. RIVERS. They have discretion.

General CARTER. On retirement.

Mr. RIVERS. They have discretion of hiring and discretion in retirement. And they have 20 years.

General CARTER. With 50 years and 20 years service, yes, sir.

Mr. RIVERS. Go ahead, Mr. Stratton.

Mr. STRATTON. Now, General, coming back——

General CARTER. That is an amendment to the Civil Service Retirement Act.

Mr. RIVERS. The Civil Service Act, that is right.

Mr. STRATTON. Coming back to these 125 that you said you relieved.

Mr. STRATTON. This sounds pretty much like the same kind of thing that we get in the hump legislation in the Navy and the white charger legislation in the Air Force.

In other words, you just got a surfeit of people, of skills, that have somewhat become outmoded?

General CARTER. This is what generated this, sir.

Fortunately, in some cases we found a need for those skills in other departments of the Government, and in some cases we were able to have these people reassigned even at a grade higher than what we had been giving them.

There was nothing wrong with them as people.

Mr. GAVIN. Approximately, out of the 125, how many did you get placed in other branches of Government?

5835

General CARTER. 125 we released from the Agency, sir?

Mr. GAVIN. Yes. I say, how many did you find jobs for?

General CARTER. In the neighborhood of 45 to 49.

Mr. ECHOLS. Right.

General CARTER. I can furnish the complete records if the committee would so wish.

Mr. GAVIN. Did the State Department take any of them?

General CARTER. Yes, sir.

Mr. GAVIN. Approximately how many?

General CARTER. As I recall, sir—and I would have to give you the figures—there were two or three who transferred to the State Department.

A number to the Department of Defense, several to Agriculture and Commerce, and many within our own Agency transferred from an activity in which they had been determined surplus in their service, but we were able to, by retraining, reorient them so that they were capable of performing adequately in other services.

Mr. HARDY. I would like to pursue this one point, if I might, because I had this one down here as a note, too.

We are talking now about some specific involuntary separations. And I wanted to inquire as to whether you had statistics which you could furnish now, if you have them, and if not, later on, as to the number of involuntary separations over a period of years, the length of service, and the age groups in which they fall, and also the grade at the time of separation.

Now, we have been talking about this 5-year thing. I don't know whether—do you have such figures as that? Have you compiled them?

General CARTER. I don't think I have them here, sir, but I know in most every case.

There are a total of 191 personnel that have been involuntarily considered for separation from the Agency in the past 2 years.

This program has only been in existence 2 years.

Mr. HARDY. Well, then, you ought not have much trouble in developing the figures on it.

General CARTER. No, sir. We have all the figures. I do not have them with me.

Mr. HARDY. I think they would be very important in our discussion of this retirement, regardless of age, for those above grade 14.

How many of those have been actually separated, of people above grade 14?

General CARTER. Do you have those figures, by any chance?

Mr. ECHOLS. Of last year's exercise, to which the general referred, 28 of the group were in grade 14 or 15.

Mr. HARDY. Well, grade 14 or above.

Mr. ECHOLS. Fourteen and above.

Mr. HARDY. Twenty-eight.

Now, what was the length of service of those people, now? How did they vary?

Mr. ECHOLS. One had 30 years' service; 16 had 20 to 24 years' service; 7 had 15 to 19 years' service; 3 had 10 to 14 years' service, and 1 had 9 years' service.

Mr. HARDY. All right.

Now, of your seven, what age groups did they fall in?

5836

Your seven, three, and your one—let's talk of the ones under 20 years.

Mr. ECHOLS. I am sorry, I do not have the ages of these individuals.

Mr. HARDY. Well, I just wonder if we aren't worrying about something that actually isn't too important, and if we shouldn't have an age limitation on there as well as a right to deferred annuity, as would happen below grade 14. Below grade 14 they can retire on a deferred annuity.

General CARTER. Yes, sir.

Mr. HARDY. And that is anybody.

General CARTER. Yes, sir.

Mr. HARDY. So I think we ought to understand what we are talking about with respect to these above grade 14.

Because most of the ones that you have separated above grade 14: It wouldn't have made a bit of difference, because their length of service was above 20 years.

General CARTER. That is correct, sir.

This is one of the reasons we would like to get this retirement, although the bulk of these people would not have been eligible even under this retirement bill for the 50-20.

Mr. HARDY. You are going to have to do a lot of fancy finagling to convince me that you ought to have this business of immediate retirement after 5 years of service regardless of age.

I don't care if the State Department has that. It is wrong in my book. And I don't believe you can justify it.

I don't believe you have any real virtue in the thing, to start with. And certainly we can find an age period in there based—which coupled with length of service should meet the need, without getting into this language, which will permit so many screwball determinations.

And I am not suggesting that the present incumbents who would have the discretionary authority are going to abuse it.

But when we set up legislation that permits it, you open the door right wide, and that is the thing that I am objecting to.

Mr. BLANDFORD. Mr. Hardy, may I comment on that?

There is a problem here, also, General, in connection with this to which Mr. Hardy alludes, first, with regard to the people who have already been released.

May I ask whether this bill would in any way benefit anyone already been released from CIA?

General CARTER. It is not intended to have this bill retroactive, no, sir.

Mr. BLANDFORD. All right. That is point 1.

Now, point 2. A man is put into this retirement system. As I reread this bill, section 251 and 252 and 253, if it is left in here, he takes with him for retirement purposes all of his prior civil service employment and all of his military service.

General CARTER. Yes.

Mr. BLANDFORD. Now, under this, then, it would be possible for a man to be covered in this type of a retirement system who might spend only 1 or 2 years in qualifying service, and then he would have 20 years of service which would be multiplied by 2 percent, so that he would retire at age 50, we will say, without any loss in his annuity,

5837

and he would have received credit for all of his civil service employment, all of his military service, and yet only have contributed 2 years in qualifying service.

Isn't that possible under this bill?

General CARTER. It is possible mechanically under the bill, sir, but in my opinion it would be a most indiscreet Director and a totally ineffective retirement board who would accept him as part of this program.

Mr. BLANDFORD. Could we have a commitment from you that under no circumstances will an individual be allowed to qualify for retirement or be permitted to retire if such a system is initiated who has had less than 5 years of qualifying service?

General CARTER. I don't think this would hurt us at all.

Mr. HARDY. Then we ought to put it in the bill.

Mr. BENNETT. Put it in the statute.

Mr. HARDY. Because while he can commit himself, he can't commit his successor.

Mr. BLANDFORD. No, sir.

I am raising the point. Because these are the problems—I am merely talking about what the law would permit, and not what you are planning to do.

This law, as I see it, gives credit for all prior military service and all prior civil service that you had.

Now, you could, under this law, come in for a very short period of time, be employed by CIA for a very brief period of time, relatively speaking, and then he could apply upon the completion of 20 years total Government service for retirement under this special retirement provision and immediately receive a full annuity, something not possible under civil service.

Now, don't you think we ought to provide in here that a person would have to be a participant in the retirement fund for x number of years under this special retirement fund, x number of years before he would even be eligible to apply for retirement?

Don't you think it would strengthen your bill?

General CARTER. Well, if our bill needs strengthening in this regard to become part of the legislative program, I would want to run a quick check to see just what complications were in this before we said 5 years, 10 years, or whatever it might be.

I submit that there has got to be some degree of discretion, it seems to me, left up to the Director just as it is presently left up to the Director of the Federal Bureau of Investigation, to the Director of the Secret Service, and other activities who must make a similar determination.

Mr. BLANDFORD. I think the whole bill——

General CARTER. I just don't know.

Mr. BLANDFORD (continuing). Is based upon the discretion that you are going to vest in the Director.

But I think the points that are being raised, that Mr. Hardy has raised and other members have raised, concerning this bill, is the fact that this committee, under a very severe handicap, has to explain on the floor of the House how we are setting up a retirement system such as this.

We are going to be precluded from explaining many of the things that you explained to us.

5838

Mr. RIVERS. And we are going to be precluded from explaining a lot of things that could be explained by the Foreign Service and by the FBI and by the Secret Service.

We have to do this. So we want to give them as much as we possibly can.

General CARTER. Yes, sir.

Mr. Chairman, this is one of the reasons why in seeking a solution to our problem, which is a very real one and a very compelling one—

Mr. RIVERS. We understand.

General CARTER (continuing). We determined that the easiest way, the simplest way to get an equitable program was to get one which was already in existence. And this was the Foreign Service Retirement Act. And then to apply that only to a limited number of our people.

And we would not hesitate publicly to give a feel of just what the activities of these limited people would be. This would not be a real problem, providing we did not get into details.

As I have indicated, it is not over 30 percent of our people at the most.

Mr. BATES. Mr. Chairman.

Mr. RIVERS. Mr. Hardy, have you finished?

Mr. HARDY. Yes, except I would just like to comment on that.

I gamble with you, if this is put into effect, you wouldn't have many CIA directors before the thing would cover everybody in CIA.

General CARTER. I don't know, sir.

Mr. HARDY. That is the trend of Government, General, and you know it just as well as we know it. All you have to do is look at the history, and very recent history, and you would find that wherever there is discretion, it has gone to the winds now.

Mr. BATES. Look at the Joint Staff.

Mr. HARDY. I am all through—yes, look at the Joint Staff. That is a perfect example.

Mr. HUDDLESTON. Mr. Chairman.

Mr. RIVERS. Mr. Bates is next.

Mr. BATES. General, I think you can see what has developed here now.

General CARTER. I can see.

Mr. BATES. There are two problems: The one that we are going to have on the floor, and I think also the problem in the mind of these individuals who are interested in their own retirement and what kind of plans can they make. They are interested in those, as everybody is.

Did you ever give any thought to trying to spell this out for us in the statute?

General CARTER. As to the criteria?

We have given a lot of soul-searching study as to just how to spell this out. And I am sure you can see the complications that we got into.

Mr. BATES. How about the FBI?

General CARTER. As to what was the degree of hazard?

This, again, is determined by the Director of the FBI, giving consideration to the degree of hazard to which the employee was

subjected and the performance of his duties, rather than the general duties of the class of the position held by such employee.

The legislative history indicates that its purpose was to allow earlier retirement of certain employees whose duties are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States—in other words, a hazardous type of duty.

But the Director, himself, makes that determination at the time the application is submitted.

Mr. BATES. You are talking now about the 20 or are you talking about over 5, or what?

General CARTER. I am talking about the 50 and 20 provision, sir.

Mr. BATES. General, are you aware of any changes which are being suggested for the FBI now in respect to this 20-year retirement?

General CARTER. No, sir, I am not.

Our legal counsel is not, either—are you aware of any changes that are being proposed for the FBI retirement system?

Mr. O'NEILL. No, sir.

Mr. BATES. Well, there is something in the wind.

Now, whether that just comes from the employees and not the agency, I don't know. But I know the employees have suggested certain changes.

General CARTER. I am not aware of them.

Mr. RIVERS. What you mean, the FBI?

Mr. BATES. Is there a reduced annuity now in the FBI for 50 and 20?

Mr. HOUSTON. Straight 2 percent, I believe.

Mr. WOODYEAR. Straight 2 percent.

General CARTER. Theirs is straight 2 percent.

Mr. BATES. No reductions.

Mr. BLANDFORD. The same thing in the Federal Prisons System.

There is some discussion now for all civil service retirement, to eliminate the reduction in annuity if you provide for your survivor. That is being discussed now.

General CARTER. Mr. Chairman, may I continue with a statement here which I think will answer some of your questions, sir?

Mr. RIVERS. Let's see.

Mr. Bates?

Mr. BATES. Let him proceed.

Mr. RIVERS. Go ahead.

General CARTER. Part C of the proposed act states: "The annuity of a participant shall be equal to 2 percent of his average basic salary for the highest 5 consecutive years of service for which full contributions have been made to the fund."

So before, under this special retirement legislation, a man is eligible, he must have made at least 5 years of contributions to the retirement fund.

Mr. BLANDFORD. I don't think so, General. I don't think so, because you get credit for all your past contributions.

You may mean in this way, but I don't believe that GAO would necessarily interpret it that way.

General CARTER. Yes, sir.

Mr. BLANDFORD. You see, you get credit for all of your prior service for which you have contributed, which automatically goes into the fund.

Mr. RIVERS. But it is based—wait a minute now——

Mr. HOUSTON. I think that would be a strained interpretation.

General CARTER. We would have trouble.

Mr. BLANDFORD. How are you going to pick up prior civil service credit then?

Mr. HOUSTON. After the 5 years' eligibility commences.

Mr. BLANDFORD. If that is what you mean, then it ought to be spelled out to say that.

Mr. RIVERS. Isn't it the same way the retirement for the Congress, Members of the Congress, is computed, Mr. Blandford?

Mr. BATES. No.

Mr. BLANDFORD. Well, there is a variation. You have to have a minimum of 6 years of service and be age 62 before you qualify for congressional retirement.

Mr. BATES. No.

Mr. RIVERS. I was talking about as to the provision of last year.

Mr. BATES. Congress has various methods, one of which is 50-20, but where it is predicated upon a 15-percent reduction if you are age 50 after 10 years of service.

Mr. RIVERS. But you compute the 5 highest years as the criteria.

Mr. BATES. Yes, sir.

General CARTER. Yes, sir; regardless of the number of years of service more than 5.

Mr. RIVERS. That is right.

Mr. BATES. Now, you use the term "consecutive years." And it might also work out that way, you don't know.

General CARTER. Yes, sir; the highest 5 consecutive.

Mr. BATES. I don't think I ever heard the word "consecutive" used before.

General CARTER. Well, I think that is identical language with the Foreign Service Act, sir.

Mr. BLANDFORD. General——

General CARTER. Yes, sir?

Mr. BLANDFORD. If your interpretation was correct, this system couldn't go into effect for 5 years.

Mr. BATES. Let me follow this for just a minute here, if I may.

Mr. RIVERS. Wait a minute.

Mr. WOODYEAR. Could I say something?

General CARTER. Yes.

I would like, if you don't mind, Mr. Chairman, to have Mr. Wood-year indicate the applicability of this to the Foreign Service Act.

Mr. RIVERS. Now, Mr. Bates——

Mr. BATES. I just want to get this word "consecutive" straightened out.

Mr. WOODYEAR. Well, to go back, sir, the "consecutive" is used on civil service and in the Foreign Service, of 5 consecutive years—not the last 5 years, but the 5 highest consecutive years.

That is, if a man should have received a reduction in salary during his latter years he could still pick up the high 5, but they are consecutive in all systems.

Mr. BATES. They have to be consecutive.

Now, say you have a program where you are 1 year out——

General CARTER. No——

Mr. WOODYEAR. Consecutive employment.

Mr. BATES. Now take these individuals that you had to find a spot for them, and say they were overseas, et cetera, and where they only had 4 years, consecutive years, and then they had to get transferred to another job with a lower pay.

Would you have that kind of a situation develop?

Mr. HELMS. Mr. Bates, we pay our employees at a given rate depending on our own promotion system. We use the civil service pay scales.

Mr. BATES. I understand that.

Mr. HELMS. Yes.

Mr. BATES. But where he had certain skills——

Mr. HELMS. Yes; but as far as we are concerned, it is the five consecutive years with us.

He may get to be a GS-15 and stay there for 5 consecutive years and during that period he may have served in two or three different jobs.

Mr. BATES. That is right.

Mr. HELMS. Yes.

Mr. BATES. So what you pay him is a certain figure we will say for 3 years overseas. Now, say you don't need the skill any more and he comes home. And before he has got 5 consecutive years he is in a different job, not using his old skills because you don't need those any more. So now he doesn't get 5 consecutive years at this high rate, but only 4.

Now does that mean that he has got to get another series of 5 at a lower rate, but a consecutive 5-year period?

In other words, these 4 years—you don't average them. They are gone. Unless you have 5.

Mr. HELMS. That is correct.

Mr. BATES. Now, would you fall into that kind of a situation for a person that we are discussing here?

Mr. HELMS. It could happen.

Mr. ECHOLS. Only if the man left Government service.

General CARTER. Only if he left the Government service, Mr. Bates, would this happen.

Mr. BLANDFORD. I believe the civil service is the 5 higher years.

Mr. BATES. That is right, but not here. This is 5 consecutive.

Mr. RIVERS. Mr. Woodyear has said that the State Department has the 5 highest consecutive years.

Mr. WOODYEAR. Consecutive.

General CARTER. Consecutive.

Mr. WOODYEAR. If he stays in Government—or if he leaves Government and goes to private industry and comes back to CIA with a break, they would still be consecutive employment with CIA.

Mr. BATES. Now let me ask this question; in the Foreign Service, do you ever have the situation develop where a man for 4 years has a high rate of pay and then no longer do you have use for that particular skill, so that you give him another job at a lesser pay and retrain him, as the general indicated—do you ever have that kind of a situation?

Mr. WOODYEAR. I don't recall any such situation, sir.

5842

But if he should happen to retire at the end of that year of training, it would still figure in his 4 highest years, plus the additional year, which might lower his general average.

But it would be the highest five that he had in his entire service.

Mr. BATES. Then-----

General CARTER. The highest five.

Mr. RIVERS. It would still be consecutive.

Mr. WOODYEAR. The average of the 5 years.

Mr. RIVERS. You would have four consecutive ones right next to him. That would be five.

Mr. WOODYEAR. But one would be lower, so it would lower the average.

Mr. BATES. You are talking about an average.

Mr. RIVERS. It would be an average there.

General CARTER. We are talking about an average of 5 years, and the 5 years must be a continuous 5 years.

Mr. RIVERS. It will have to average out.

Mr. BATES. No.

He is talking about an averaging out. But you are not talking about any averaging of 5 consecutive years, and 5 highest consecutive years.

Are you talking about an average there?

General CARTER. Yes, sir.

Mr. BATES. Am I talking an average there?

General CARTER. Yes, sir.

When the man is retired, you look over his pay scale and in his best interest you pick the 5 years consecutive, which will give you the highest average salary.

Mr. BATES. Now read that language that you read before.

I don't want to belabor the point, but I don't want to see us fall into a trap here, either.

General CARTER. Yes, sir.

The annuity of a participant shall be equal to 2 percent of his average basic salary for the highest 5 years consecutive years of service.

Mr. BATES. All right.

Now, if you only--the way I read this-----

General CARTER. Average basic salary.

Mr. BATES. The way I read this thing here: If you only have 4 years at a high rate, then it doesn't even count. You have to take the 5 highest years you have.

Mr. RIVERS. Oh, no.

Mr. BATES. Wait a minute now.

Mr. RIVERS. That is not the interpretation.

Mr. BATES. No.

I want to get this straightened out.

Mr. RIVERS. Let us get it straightened out.

Mr. BATES. As long as it means average, I won't argue the point any more.

But you say the five highest consecutive--five-----

Mr. RIVERS. That is-----

Mr. BATES. Then you can't use an average.

Mr. RIVERS. That is the only thing you can use. You use four and the one next to it.

5843

Mr. BLANDFORD. You would have to.

Mr. RIVERS. That is what we do in the Congress. There isn't any other way to do it.

Mr. BATES. Then you are talking about averages.

Mr. RIVERS. That is right.

Mr. BATES. If you are talking about the 5 highest consecutive years and you only have 4, those are out. You have to get down to a lower bracket to find the 5 highest consecutive.

Mr. RIVERS. That is not my understanding.

General CARTER. No, sir.

You might have a man in GS-13 for 2 or 3 years.

Mr. BATES. All right.

General CARTER. And where he is promoted to GS-14 for 2 years. And then he is demoted to GS-13 for 1 year.

That is 5 years.

Mr. RIVERS. That is my understanding.

General CARTER. Three of which are GS-13 and two of which are GS-14.

You add up his basic salary for those 5 consecutive years. You divide by 5. Two percent of that is his annuity.

Mr. BATES. I just wanted to make certain you are talking about averages.

Mr. RIVERS. With this explanation, it does turn out to be average.

But it is still the 5 highest.

General CARTER. Yes, sir; still the 5 highest.

Mr. BLANDFORD. To go back to that point—

Mr. BATES. If you use the word "average" it is different. If you don't use the word "average," then you don't get the highest pay.

Mr. RIVERS. Mr. Blandford.

Mr. BLANDFORD. For the sake of the record I indicated it was possible under this bill for an individual to transfer, we will say from the Department of Agriculture with 18 years of service and serve 2 years and qualify for retirement under this special retirement fund.

You indicated that that would not be possible, because you pointed to the 5 consecutive years of service and then you indicated for which full contributions had been made to the fund.

General CARTER. Yes, sir.

Mr. BLANDFORD. Now, obviously this can't be the proper interpretation to place upon this proposed section. Because otherwise your retirement system could no go into effect for 5 years.

General CARTER. That is right.

Mr. BLANDFORD. Would you agree with that?

General CARTER. You are correct; yes, sir.

Mr. BLANDFORD. So therefore it would be possible for an individual to come into this program and serve for as little as 1 year and retire under this special retirement fund.

General CARTER. It would be technically possible, sir.

It would be impossible for him to meet the reasonable criteria—

Mr. BLANDFORD. Well—

General CARTER (continuing). To become eligible for this specific type of retirement.

Mr. BLANDFORD. I am merely trying to put in the record the possibilities, and for you to answer that this is not the way it is intended to be implemented.

5844

That is the reason I am asking these questions.

General CARTER. That is true.

And, Mr. Chairman, I would like to expand on the manner in which this will be implemented.

Mr. RIVERS. Now, also, the committee is quite sympathetic. I want you to understand that. And wherever you can, make the changes in this thing to give us as much information as you can consistently do.

Because with all speed we are going to get it out, but we have to go slowly.

But wherever you can in these areas—Mr. Blandford, Mr. Hardy, and Mr. Bates are all correct—let us give them as much as we can.

We may have to rewrite a lot of these. I am sure we will. But let's do it.

General CARTER. Yes, sir.

Mr. RIVERS. We want you to do that.

Go ahead now.

General CARTER. Mr. Chairman, we have necessarily deviated from the terms of the Foreign Service Act which applies to all Foreign Service officers, since only a limited number of Agency employees will serve under conditions which will warrant their retirement under this law rather than under normal civil service retirement. And those who are to be designated as participants pursuant to this action will undergo a rigid selection process.

This system is designed for those officers whose careers over the years are predominantly concerned with the conduct and support of intelligence activities in foreign countries.

It is intended to designate an employee as a participant in this system at the earliest time after he has gained full career employee status in the Agency.

The earliest time that it can be determined that his career field of work is in the conduct and support of intelligence activities in foreign countries.

Thereafter, his service record will be reviewed periodically to verify that his career has remained in this field and that he is in fact performing qualifying service for sufficient periods of time to warrant his continued designation as a participant.

If on such review it should be determined that an officer's career specialization has permanently shifted to a different field, he will be transferred to the civil service retirement system.

However, when an employee who has been designated as a participant has met all of the minimum requirements for retirement under this system and then shifts to another field of career specialization, he would ordinarily be viewed as having acquired a right to the benefits he has already qualified for and earned under this system, and would be permitted to remain in it.

These criteria will, as I have indicated, be established by the Agency retirement board and then must be approved by the Director.

Mr. BATES. Mr. Chairman.

Mr. RIVERS. Now, this would be a part of our record. So this explanation will go along with our record.

Mr. BATES. General—

Mr. RIVERS. The interpretation.

Mr. BATES. In the military, years ago, they used to talk about an individual getting into the Regular service, and at a certain point, I

5845

believe it was 15 years, once he had acquired 15 years, then he was good for retirement, if he was in the Regular service.

Now, can't we tie something into this in terms of number of years, to give an individual some sort of assurance, "When I have made the grade, and can I retire on 20, and what kind of plans can I make," and thinks along that line.

Mr. RIVERS. This is what I had in mind, when I said prepare the changes.

Mr. BATES. Can you take 10 years—

Mr. RIVERS. We ought to give these people some sort of an opportunity to indicate "Just where I am now and where I am going."

Because this thing—the reason you are up here, General, is to look out for a group of people who are under the gun all the time and they can't live for 30 years.

General CARTER. Mr. Chairman, it might appear that this would be helpful to the individual. And I don't think it would be helpful to the Agency across the board to make promises or to indicate a particular career pattern early so that he can conform to and then be guaranteed this early retirement.

Mr. BATES. No.

General CARTER. It just doesn't seem to me in the books that we would want to do this.

Mr. BATES. Let us presume we are going to do the same thing in the military, that at a point certain you then will be entitled under the provisions of the bill to retire on 20.

Now, you can still shift this individual around, performing any kind of work at all. You won't have to keep him in qualifying service but you could assign him to something else, after some point. Maybe 15 years.

Mr. RIVERS. Of course we don't want to get you in the position where a civil service employee can tell you, like they tell the military, that you can't fire them. They do that every day in the week and twice on Sunday.

Mr. BLANDFORD. He does have a guarantee of retirement, because he would shift into the civil service retirement program.

General CARTER. Oh, yes, he always has the guarantee of retirement under civil service.

Mr. BATES. Not this. Not the same as you are going to get.

General CARTER. No, sir.

He would then come under the civil service retirement program, the regular retirement program, unless his service had been so arduous that the Director says "As far as I am concerned, you have met our criteria for early retirement, and when that times comes you have acquired this privilege and you may apply for it."

I can think of other officers in this service who could well be involved in intelligence activities in foreign countries for a large portion of their career, but who would not be eligible for this early retirement because their type of duty did not qualify them.

Mr. BATES. When do these individuals find out when they are going to be entitled to it? When? When they have reached 20?

General CARTER. I can't tell you in years, sir.

Mr. BATES. I mean when they reach 20 years.

General CARTER. We will designate them at the earliest possible time after they have become full career employees—earliest possible

5846

time that we can determine that his career work is in fact the type of work that will fall under the Director sponsorship as being entitled to early retirement.

Mr. BATES. Well, does that mean at the end of 5 years, at the end of 17 years, or what?

General CARTER. I don't think I can answer that. I doubt if—

Mr. BATES. All I am doing, General, is putting myself in the position of one of these individuals and wonder just where I stand.

Mr. ECHOLS. Sir, if a person who has been covered by this retirement system attains age 50 and has completed 20 years' service, he obviously, then, would be eligible for voluntary retirement.

So even though he continues in our service indefinitely and may transfer to another field of work which no longer qualifies him, he would never be removed from this retirement system, because he has earned his voluntary retirement.

Mr. BATES. When does he earn it?

Mr. ECHOLS. By completion of 20 years of service and upon attainment of age 50.

Mr. BATES. No.

Where you transferred him to a different job and you had to make a determination at some point that he would come under the 50-20 provisions.

You have to do that at some point.

General CARTER. That is right.

Mr. BATES. That is what we are talking about.

When is it decided, even though he is being transferred to another job, whether or not this man has fulfilled the requirements of this special category and will be entitled to the 50-20? That is what I am trying to determine. When will he know this?

Now, you say as early as possible.

General CARTER. He might know this after 6 or 7 years; he might know it. He might not know it until 19 years. He is not going to know definitely.

Because the criteria are determined by the retirement board and the Director. And he could easily qualify, perhaps, in the first 7 years of his career.

This does not mean, however, that we would not keep him on for 30 years.

Mr. BATES. I understand that.

General CARTER. Even though he might be eligible for retirement at age 50 and 20 years of service.

Mr. BATES. So even though you might be able to make this determination earlier, why couldn't you say that certainly by the time he reaches 15 years that he will then be entitled to it?

General CARTER. If he had performed the type of service in his first 15 years that would qualify him so that his last 5 years could be on staff, we could tell him and we would tell him.

Mr. RIVERS. You will have to make up certain regulations.

General CARTER. Yes, sir.

Mr. RIVERS. And certain things pursuant to the provisions of this act, and I imagine they would be published.

General CARTER. Well, they will certainly be published within the Agency.

Mr. RIVERS. Within the Agency.

5847

So the man will know all about it. It just follows, it seems like to me.

Mr. HARDY. The chances are such regulations would have to be classified and wouldn't be public.

General CARTER. Not generally, but it would be known to every employee of the Agency. We intend to keep the employee informed periodically by a review of his records as to how he stands on his status for early retirement.

Mr. BATES. Wait. This has to be adjudicated by a board or by the Director.

General CARTER. The final decision, sir?

Mr. BATES. Right.

General CARTER. But we will review his records periodically and particularly when there is a change in his assignment, and should be able to inform him——

Mr. RIVERS. I would think——

General CARTER. If he has built up any equity—excuse me, Mr. Chairman.

Mr. RIVERS. I would think, within your regulations, the way you operate the Agency when this act is passed, there would be some provision that you set up where a man could request some sort of a determination at some point down the line.

I mean this would be—something would be convened to do it.

Mr. BENNETT. Mr. Chairman, may I ask a question——

General CARTER. This is no problem, Mr. Chairman.

Mr. RIVERS. I don't think it would be.

General CARTER. None whatsoever, sir.

We have a Director of Personnel. Each of our career services is represented with him in their career services, in their personnel officers.

Mr. RIVERS. I am sure you do.

Mr. BENNETT. Mr. Chairman, I want to ask one question.

Mr. RIVERS. We are going to have to adjourn.

Mr. BENNETT. One brief question.

I would like to ask if, in this statute, is there any minimum length of time that a person must be in this type of activity in order to get the 50-20?

Mr. BLANDFORD. No.

General CARTER. Not in the statute; no, sir.

Mr. BENNETT. I think there should be.

Mr. BLANDFORD. That is what we were talking about.

Mr. BENNETT. I thought you were, but I had some feeling that maybe it was under the 5-year provision.

General CARTER. You could serve in this career service, sir, without ever once being involved in a hazardous operation or, on the other hand, in one operation which would so acclimate you that you should be retired at 50 years and 20 years of service.

Mr. BENNETT. There ought to be some sort of minimum.

In other words, it would leave the fine discretion of the individual's tremendous financial benefits, which could be based upon a month's service or any short service like that.

Mr. BLANDFORD. That is the point we discussed earlier, General, that there ought to be in this bill somewhere a provision that says that you must actually be a participant and have been designated by the Di-

5848

rector as a participant in this fund for a period of 5 years or engaged in such occupation for a period of not less than 5 years as to qualify for this fund.

This is what we are getting at. In other words, to prevent somebody from coming here with a short period of service.

Mr. OSMERS. Mr. Chairman, I wonder if the general would have any objection to that being written—the 5-year minimum being written into the law?

General CARTER. No. This would not give me any problem at all, sir.

Mr. RIVERS. I don't think——

General CARTER. I think we can put it right in without any trouble.

Mr. OSMERS. I think, Mr. Chairman—the principal reservation that I think most of the members of the subcommittee have on the legislation is the fact that it might—I won't use the word “capriciously,” but it might in some future situation.

Where you have a man with a very short period of time, this might be used to give him great financial advantage, and if we wrote 5 years minimum it would resolve the problem.

Mr. RIVERS. Let's see if we can.

General CARTER. Yes, sir.

Mr. RIVERS. Now there is the 12 o'clock bell.

Tomorrow morning at 10 o'clock.

General CARTER. Have we adjourned, Mr. Chairman?

Mr. RIVERS. Yes, sir. We will recess until tomorrow morning at 10 o'clock.

Mr. HOUSTON. At what time?

Mr. RIVERS. Ten o'clock.

(Whereupon, at 12:02 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, July 25, 1963.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,
Washington, D.C., Thursday, July 25, 1963.

The subcommittee met at 10 a.m., Hon L. Mendel Rivers (chairman of the subcommittee) presiding.

Mr. RIVERS. Let the committee come to order.

Now, Mr. Blandford, where are we?

Mr. BLANDFORD. Mr. Chairman, we have discussed the retirement features in general of this proposal and, of course, there are disability sections which are similar to the Foreign Service Act. There are also provisions for survivors which are similar to those found in the Foreign Service Act.

I would like to suggest to the subcommittee that we briefly discuss title 1 of the bill with the idea in mind that because of the nature of this bill, because it is complicated enough in its retirement features, that we delete all of title 1 from this bill.

Mr. RIVERS. It is my thought, General—and all you gentlemen who had a part in the drafting of this proposal—that you approached this thing with the philosophy that this is your first time really attacking this thing from a permanent, organic act view, dealing with these

various matters, and that it was your desire to put in everything you could, because it may be one of your last for a long time to get before our committee. But from Mr. Bates' and Mr. Hardy's interrogations and your responses, I hope that wasn't the way you approached it. I feel that we got too much in it. I want to help in providing the things that give you a security, a permanence, and a legal basis for making these representations to the people whom you need, and you do need the best.

And you have such a fine organization and you have such a difficult assignment, having to do all these things, and involving some jobs which aren't easy for an American who is used to living an open book. It is not like these other people.

I would rather—I talked with Mr. Blandford and other members of the committee, and it is my thought that if we would address ourselves to the vital parts of this bill now and get on with the business of setting up between now and next year, you can bring another bill over here, we will take it up, I will tell you that.

I am as interested in CIA as you are, and I think we have an excellent setup. I think an awful lot of both you and Mr. McCone and your representatives over here, everybody who has had contact with me in my acquaintance has been quite impressed with all of them, all whom you have had over here, Mr. Warner, and all these gentlemen. I would think that would be the wise course to pursue now.

Mr. Blandford is of that persuasion. I hope the subcommittee will agree with me.

Mr. HARDY. Mr. Chairman, could I comment on that?

Mr. RIVERS. Yes.

Mr. HARDY. I think—and, of course, I would like to have the general's comment on it—but I think that is going to be one of the most important decisions we can make in connection with this bill, and I do think that some of the provisions that we have been talking about we can probably modify in a way that won't really do any damage to the objectives of the legislation, and avoid controversy that we otherwise would generate.

As a matter of fact, I think you have got, in patterning this thing after the Foreign Service, I think you have some liberal provisions in here which are not necessarily going to be upheld and which can be modified and accomplish everything that you have in mind. So if we can do that, and—I would like to see you have a retirement program for this group of people that would be helpful in recruitment and in retaining people that you need.

Mr. RIVERS. You got to start off copying somebody, for facility. And the thing to do is to try to get the best of all of them. And you could be really the outstanding system which would be envied by other people.

Mr. HARDY. As a matter of fact, as has just been suggested, you might come up with something that would overcome some of the objections in certain existing systems. I would venture a guess that some of these aspects in the Foreign Service program are not necessary for the accomplishment of the objectives that you have in mind, even to the Foreign Service. And I am not at all sure that the actual administration of those in the Foreign Service would stand very close scrutiny without running into an awful lot of congressional objection.

5850

Frankly, I have considered, just as an individual proposing an amendment to the Foreign Service Act, to take out some of these things. I didn't know they were in there, and I expect I know as much about the Foreign Service as most of the members of this committee. So I think that we can correct in this bill some of the things I don't believe Congress knows are in the Foreign Service Act.

Mr. RIVERS. Well, of course, as I said in my statement, we are not expert in this thing, we are more expert in the military end of it. We do have the experts on our staff and committee in that area, but I would rather become expert on something we are proposing for you and let you be the envy of other people, than the things on which we have misgivings. So unless Mr. Bates and the other members have any questions, I would like to consider what Mr. Blandford has suggested. Have you talked to the general?

Mr. BLANDFORD. Just by coincidence, Mr. Chairman, I happen to have a version of this bill which contains three changes in it and is confined solely to retirement.

I would like to suggest, if it is agreeable with the subcommittee, that we substitute at this point for our consideration this substitute bill which deals solely with retirement and eliminates all of title 1.

It has three changes, one of them being the protection for the employee, the other being a required minimum service before anyone can take advantage of the GS-14 and above retirement feature. And, of course, this morning the Ways and Means Committee is considering the tax features.

Mr. RIVERS. I spoke to Mr. Mills yesterday and he said he would have a report for us the early part of next week.

Mr. HUDDLESTON. Mr. Chairman, I would like to ask General Carter a question.

General CARTER, is there anything in title I of such an urgency that couldn't be postponed for consideration by the committee until later on this year or even possibly next year?

General CARTER. No, sir, Mr. Huddleston, there is nothing at all. This is a tidying-up procedure.

Mr. HUDDLESTON. It wouldn't jeopardize your operation in any way?

General CARTER. No, sir, it would not.

Mr. HUDDLESTON. If we postpone consideration of all of title I.

General CARTER. No, sir.

Mr. RIVERS. Mr. Huddleston is a valuable member. This proves it.

Mr. BATES. If there is nothing in there in title I that you feel is absolutely crucial, then I think we ought to proceed without it.

Is there anything by cross-reference in the other titles that pertains to title I? Is there anything by reference?

Mr. O'NEILL. No, sir.

Mr. BATES. It is clean by itself?

General CARTER. Yes, sir. In fact, the proposed new bill just distributed by Mr. Blandford addresses itself entirely to the retirement problem, which is the major reason that we are here now.

Mr. BLANDFORD. I would like to suggest, Mr. Chairman, that at this point—and I think this might be the way to get right to the heart of this—would be to have Mr. O'Neill begin to read the substitute bill, insert the bill, the substitute bill in the record at this point, so that

5851

there will be a legislative history of what we are considering, and that we start reading the bill at this point.

Mr. RIVERS. Let the record show that at this point, without objection, it is the decision of the subcommittee to insert, in lieu of H.R. 7216, an amended short version of H.R. 7216 dealing primarily with title II.

Mr. BLANDFORD. Yes, sir.

Mr. RIVERS. Which, in effect, and primarily, will be with the retirement system and the administration of it in its entirety. Who handles that? You, General?

General CARTER. The Director, sir.

Mr. RIVERS. By the Director.

General CARTER. Yes, sir.

Mr. RIVERS. Is this plain, Mr. Blandford?

Mr. BLANDFORD. Yes, sir; this is the procedure.

(The bill is as follows:)

[H.R. 7216, 88th Cong., 1st sess.]

A BILL To provide for the establishment and maintenance of a Central Intelligence Agency Retirement and disability system and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Retirement Act of 1963."

DEFINITIONS

SEC. 2. When used in this Act, the term—

- (a) "Agency" means the Central Intelligence Agency; and
- (b) "Director" means the Director of Central Intelligence.

PART A—ESTABLISHMENT OF SYSTEM

RULES AND REGULATIONS

SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency retirement and disability system, referred to hereafter as the system.

(b) The Director shall administer the system in accordance with such rules and regulations and with the principles established by this Act.

ESTABLISHMENT AND MAINTENANCE OF FUND

SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency retirement and disability fund which shall be maintained by the Director. The Central Intelligence Agency retirement and disability fund is referred to hereafter in this title as the fund.

PARTICIPANTS

SEC. 203. The Director may designate from time to time such Agency officers and employees, hereafter referred to as participants, who shall be entitled to the benefits of the system. Any officer or employee who has completed 15 years of service with the Agency and whose career at that time is adjudged by the Director to be qualifying for the System shall remain a participant of such System for the duration of his employment by the Agency.

ANNUITANTS

SEC. 204. (a) Annuityants shall be persons who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, dependent widowers, children, and beneficiaries of participants or annuityants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this title the term—

5852

(1) "Widow" means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or is the mother of issue by such marriage.

(2) "Dependent widower" means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by such marriage, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

(3) "Child" means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before age eighteen, is incapable of self-support. In addition to the offspring of the participant and his or her spouse, the term includes (a) an adopted child, and (b) a stepchild or recognized natural child who received more than one-half of his support from the participant.

PART B—COMPULSORY CONTRIBUTIONS

SEC. 211. (a) Six and one-half per centum of the basic salary received by each participant shall be contributed to the fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Agency to the credit of the fund.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

PART C—COMPUTATION OF ANNUITIES

SEC. 221. (a) The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest five consecutive years of service, for which full contributions have been made to the fund, multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 251 and 252. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted.

(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband, commencing on the date following such participant's death and terminating upon the death of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by $2\frac{1}{2}$ per centum of any amount up to \$2,400 he specifies as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) 40 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$800; or (iii) \$1,800 divided by the number of children.

(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) 50 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$720; or (iii) \$2,160 divided by the number of children.

(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant.

(e) The annuity payable to a child under paragraph (c) or (d) of this section shall begin on the first day of the next month after the participant dies and such annuity or any right thereto shall be terminated upon death, marriage, or at

5853

tainment of the age of eighteen years, except that, if a child is incapable of self-support by reasons of mental or physical disability, the annuity shall be terminated only when such child dies, marries, or recovers from such disability.

(f) At the time of retirement an unmarried participant may elect to receive a reduced annuity and to provide for an annuity equal to 50 per centum of the reduced annuity payable after his or her death to a beneficiary whose name shall be designated in writing to the Director. The annuity payable to a participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the retiring participant, but such total reduction shall not exceed 40 per centum. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as prescribed by the Director. The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

RETIREMENT FOR DISABILITY OR INCAPACITY—PHYSICAL EXAMINATION—RECOVERY

Sec. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a) (2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury incurred in the line of duty not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the Director, be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his grade in the Agency.

(b) In each case, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade in the Agency. If the Director determines, on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered to have been separated within the meaning of section 234 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241(a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions.

5854

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself under the Federal Employees' Compensation Act of September 7, 1916, as amended, covering the same period of time. This provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period of time. Neither this provision nor any provision of the said Act of September 7, 1916, as amended, shall be so construed as to deny the right of any person to receive an annuity under this Act by reason of his own services and to receive concurrently any payment under such Act of September 7, 1916, as amended, by reason of the death of any other person.

(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 14 of the Federal Employees' Compensation Act of September 7, 1916, as amended, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal employees' compensation fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such computed payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

(f) Paragraph (4) of section 104(a) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) (relating to the exclusion from gross income of compensation for injuries and sickness) is hereby amended to read as follows:

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021), or as a disability annuity payable under section 231 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403(a) et seq.)."

DEATH IN SERVICE

SEC. 232. (a) In case a participant dies and no claim for annuity is payable under the provisions of this Act, his contributions to the fund, with interest at the rates prescribed in sections 241(a) and 281(a), shall be paid in the order of precedence shown in section 241(b).

(b) If a participant, who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a widow or a dependent widower, as defined in section 204, such widow or dependent widower shall be entitled to an annuity equal to 50 per centum of the annuity computed in accordance with the provisions of paragraph (e) of this section and of section 221(a). The annuity of such widow or dependent widower shall commence on the date following death of the participant and shall terminate upon death of the widow or dependent widower, or upon the dependent widower's becoming capable of self-support.

(c) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(1). The child's annuity shall begin and be terminated in accordance with the provisions of section 221(e). Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though such wife or husband or child had not survived the participant.

5855

(d) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(2). The child's annuity shall begin and terminate in accordance with the provisions of section 221(e). Upon termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though that child had never been entitled to the benefit.

(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the system, the annuities payable in accordance with paragraph (b) of this section shall be computed in accordance with the provisions of section 221 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this provision shall in no case exceed the difference between his or her age on the date of death and the mandatory retirement age applicable to his or her grade in the Agency. In all cases arising under paragraph (b), (c), (d), or (e) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of his death.

VOLUNTARY RETIREMENT

SEC. 233. Any participant in the system who is at least fifty years of age and has rendered twenty years of service, including service within the meaning of section 253, may on his own application and with the consent of the Director be retired from the Agency and receive benefits in accordance with the provisions of section 221, provided he has not less than five years' service with the Agency.

DISCONTINUED SERVICE RETIREMENT

SEC. 234. (a) Any participant who separates from the Agency after obtaining at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), may, upon separation from the Agency or at any time prior to becoming eligible for an annuity, elect to have his contributions to the fund returned to him in accordance with the provisions of section 241, or (except in cases where the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States) to leave his contributions in the fund and receive an annuity, computed as prescribed in section 221, commencing at the age of sixty years.

(b) If a participant who has qualified in accordance with the provisions of paragraph (a) of this section to receive a deferred annuity commencing at the age of sixty dies before reaching the age of sixty his contributions to the fund, with interest, shall be paid in accordance with the provisions of sections 241 and 281.

(c) The Director may in his discretion retire participants in grade GS-14 and above to promote the efficiency of the Agency. If so retired they shall receive retirement benefits in accordance with the provisions of section 221, provided they have, in each case, not less than five years' service with the Agency.

(d) The Director may in his discretion retire participants in grade GS-13 and below to promote the efficiency of the Agency and each such officer shall receive—

(1) one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then current salary rate, payable without interest, from the fund, in three equal installments on the 1st day of January following the officer's retirement and on the two anniversaries of this date immediately following: *Provided*, That in special cases, the Director may in his discretion accelerate or combine the installments; and

(2) a refund of the contributions made to the fund, with interest as provided in section 241(a), except that in lieu of such refund such officer, if he has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a), may elect to receive

5856

retirement benefits on reaching the age of sixty in accordance with the provisions of section 221. In the event that an officer who was separated from grade GS-13 or GS-12 and who has elected to receive retirement benefits dies before reaching the age of sixty, his death shall be considered a death in service within the meaning of section 232. In the event that an officer who was separated from grade GS-11 or below and who has elected to receive retirement benefits dies before reaching the age of sixty, the total amount of his contributions made to the fund, with interest as provided in section 241(a), shall be paid in accordance with the provisions of section 241(b).

(e) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended (31 U.S.C. 203) or the provisions of any other law, an Agency officer who is retired in accordance with the provisions of section 234(d) shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (d)(1) of this section.

MANDATORY RETIREMENT FOR AGE

SEC. 235. (a) Any participant in the system in grade GS-18 or above, shall upon reaching the age of sixty-five be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years.

(b) Any participant in the system, other than in grade GS-18 or above, shall upon reaching the age of sixty, be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such an officer's service for a period not to exceed five years.

PART E--DISPOSITION OF CONTRIBUTIONS AND INTEREST IN EXCESS OF BENEFITS RECEIVED

SEC. 241. (a) Whenever a participant becomes separated from the Agency without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the total amount of contributions from his salary with interest thereon at 3 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of separation including all contributions made during or for such period, except as provided in section 281, shall be returned to him.

(b) In the event that the total contributions of a retired participant, other than voluntary contributions made in accordance with the provisions of section 281, with interest at 4 per centum per annum compounded annually as is provided in paragraph (a) of this section added thereto, exceed the total amount returned to such participant or to an annuitant claiming through him, in the form of annuities, accumulated at the same rate of interest up to the date the annuity payments cease under the terms of the annuity, the excess of the accumulated contributions over the accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries designated by the retired participant in writing to the Director;

(2) If there be no such beneficiary, to the surviving wife or husband of such participant;

(3) If none of the above, to the child or children of such participant and descendants of deceased children by representation;

(4) If none of the above, to the parents of such participant or the survivor of them;

(5) If none of the above, the duly appointed executor or administrator of the estate of such participant;

(6) If none of the above, to other next of kin of such participant as may be determined by the Director in his judgment to be legally entitled thereto.

(c) No payment shall be made pursuant to paragraph (b)(6) of this section until after the expiration of thirty days from the death of the retired participant or his surviving annuitant.

5857

PART F—PERIOD FOR SERVICE FOR ANNUITIES

COMPUTATION OF LENGTH OF SERVICE

SEC. 251. For the purposes of this title, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under the Federal Employees' Compensation Act of September 7, 1916, as amended, and leaves of absence granted participants while performing active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

PRIOR SERVICE CREDIT

SEC. 252. (a) A participant may, subject to the provisions of this section, include in his period of service—

(1) civilian service in the executive, judicial, and legislative branches of the Federal Government and in the District of Columbia government, prior to becoming a participant; and

(2) active and honorable military or naval service in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States.

(b) A person may obtain prior civilian service credit in accordance with the provisions of paragraph (a) (1) of this section by making a special contribution to the fund equal to 5 per centum of his basic annual salary for each year of service for which credit is sought prior to November 8, 1960, and at 6½ per centum, thereafter with interest compounded annually at 4 per centum per annum to the date of payment. Any such person may, under such conditions as may be determined in each instance by the Director, pay such special contributions in installments.

(c) (1) If an officer or employee under some other Government retirement system, becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to the fund effective as of the date such officer or employee becomes a participant in the system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

(2) No officer or employee, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall be required to make contributions in addition to those transferred, for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such officer or employee on account of contributions made during any period to the other Government retirement fund, at a higher rate than that fixed by section 211 of this Act for contributions to the fund.

(3) No officer or employee, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall receive credit for periods of service for which a refund of contributions has been made, or for which no contributions were made to the other Government retirement fund. A participant may, however, obtain credit for such prior service by making a special contribution to the fund in accordance with the provisions of paragraph (b) of this section.

(d) No participant may obtain prior civilian service credit toward retirement under the system for any period of civilian service on the basis of which he is receiving or will in the future be entitled to receive any annuity under another retirement system covering civilian personnel of the Government.

(e) A participant may obtain prior military or naval service credit in accordance with the provision of paragraph (a) (2) of this section by applying for it to the Director prior to retirement or separation from the Agency. However, in the case of a participant who is eligible for and receives retired pay on account of military or naval service, the period of service upon which such retired pay is based shall not be included, except that in the case of a participant

5858

who is eligible for and receives retired pay on account of a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or is awarded under chapter 67 of title 10 of the United States Code, the period of such military or naval service shall be included. No contributions to the fund shall be required in connection with military or naval service credited to a participant in accordance with the provisions of paragraph (a) (2) of this section.

CREDIT FOR SERVICE WHILE ON MILITARY LEAVE

SEC. 253. Contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

PART G—MONEYS

ESTIMATE OF APPROPRIATIONS NEEDED

SEC. 261. The Director shall prepare the estimates of the annual appropriations required to be made to the fund, and shall cause to be made actuarial valuations of the fund at intervals of five years, or oftener if deemed necessary by him.

INVESTMENT OF MONEYS IN THE FUND

SEC. 262. The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in his judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such fund.

ATTACHMENT OF MONEYS

SEC. 263. None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 234(e).

PART H—ANNUITANTS RECALLED, REINSTATED, OR REAPPOINTED IN THE AGENCY, OR REEMPLOYED IN THE GOVERNMENT

RECALL

SEC. 271. (a) The Director may recall any annuitant to duty in the Agency whenever he shall determine such recall is in the public interest.

(b) Any annuitant recalled to duty in the Agency or reinstated or reappointed in accordance with the provisions of section 231(b) shall, while so serving, be entitled in lieu of his annuity to the full salary of the grade in which he is serving. During such service, he shall make contributions to the fund in accordance with the provisions of section 211. When he reverts to his retired status, his annuity shall be determined anew in accordance with the provisions of section 221.

REEMPLOYMENT COMPENSATION

SEC. 272. (a) Notwithstanding any other provision of law, any officer or employee of the Agency, who has retired under this Act, as amended, and is receiving an annuity pursuant thereto, and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis, shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this Act, as amended, which when combined with such salary does not exceed during any calendar year the basic salary such officer or employee was entitled to receive on the date of his retirement from the Agency. Any such reemployed officer or employee who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits hereunder.

(b) When any such retired officer or employee of the Agency is reemployed, the employer shall send a notice to the Agency of such reemployment together with all pertinent information relating thereto, and shall pay directly to such officer or employee the salary of the position in which he is serving.

5859

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed officer or employee, or from any other moneys, including his annuity, payable in accordance with the provisions of this title.

REEMPLOYMENT

SEC. 273. Notwithstanding the provisions of title 5, United States Code, section 62, and title 5, United States Code, section 715a, an Agency officer or employee retired under the provisions of this Act shall not, by reason of his retired status, be barred from employment in Federal Government service in any appointive position for which he is qualified. An annuitant so reemployed shall serve at the will of the appointing officer.

PART I—VOLUNTARY CONTRIBUTIONS

SEC. 281. (a) Any participant may, at his option and under such regulations as may be prescribed by the Director, deposit additional sums in multiples of 1 per centum of his basic salary, but not in excess of 10 per centum of such salary, which amounts together with interest at 3 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of his retirement, including all contributions made during or for such period, shall, at the date of his retirement and at his election, be—

(1) returned to him in lump sum; or

(2) used to purchase an additional life annuity; or

(3) used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Director by the participant; or

(4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Director by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in subparagraph (3) above.

(b) The benefits provided by subparagraphs (2), (3), or (4) of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by subparagraph (a) (1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

(c) In case a participant shall become separated from the Agency for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum, compounded as is provided in paragraph (a) of this section, made by him under the provisions of said paragraph (a) shall be refunded in the manner provided in section 241 for the return of contributions and interest in the case of death or separation from the Agency.

(d) Any benefits payable to an officer or to his beneficiary in respect to the additional deposits provided under this section shall be in addition to the benefits otherwise provided under this title."

Mr. RIVERS. So let's now start considering the new proposal, or the amended version. [Reading:]

A BILL To provide for the establishment and maintenance of a Central Intelligence Agency Retirement and disability system and for other purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Retirement Act of 1963."

SEC. 2. When used in this Act, the term—

(a) "Agency" means the Central Intelligence Agency; and

(b) "Director" means the Director of Central Intelligence.

Now, Mr. Blandford, you take up from there.

Mr. BLANDFORD. All right, let's just proceed then, Mr. O'Neill, or General, with an explanation of why we want to change the definition or what the definitions means. Let's start right from there and read the bill and explain it as we go along.

Mr. RIVERS. Go ahead.

Mr. O'NEILL. All right, sir.

5860

Mr. BATES. I don't want to nit-pick, but on the second line, "to establish the maintenance of a Central Intelligence Retirement and disability system," shouldn't that be caps on those?

Mr. BLANDFORD. I think either the "retirement" ought to be small or the "disability" ought to be large.

Mr. BATES. No, this is retirement, not the establishment of an agency. So it would have to have caps on the "retirement."

Mr. BLANDFORD. Then "disability" ought to be capitalized.

Mr. RIVERS. We can correct that.

Mr. BLANDFORD. I might also make another suggestion and that is some words of limitation in the title, itself, to get away from the idea that this is going to apply to all of the CIA.

Mr. BATES. Right.

Mr. BLANDFORD. I would suggest this title, Mr. Chairman, "To Provide for the Establishment and Maintenance of a Central Intelligence Agency Retirement and Disability System for a Limited Number of Employees and for Other Purposes."

Mr. RIVERS. That takes care of it.

Mr. HARDY. That suits me.

Mr. BENNETT. That is good.

Mr. HARDY. If it should be desirable to put a limit on the number, specifically, we can do that in another section.

Mr. BLANDFORD. We may have to get into that when we get into the sections.

Mr. RIVERS. I think that will take care of it.

Mr. BLANDFORD. All right.

Mr. RIVERS. Are you ready to read the bill?

Mr. O'NEILL. Yes, sir.

Mr. RIVERS. Go ahead.

Mr. O'NEILL (reading) :

DEFINITIONS

SEC. 2. When used in this Act, the term—

- (a) "Agency" means the Central Intelligence Agency; and
- (b) "Director" means the Director of Central Intelligence.

In explanation, these are routine definitions.

Mr. BLANDFORD. All right.

Mr. O'NEILL (reading) :

PART A—ESTABLISHMENT OF SYSTEM

RULES AND REGULATIONS

Mr. BATES. Mr. Chairman, I would suggest that from here on any of these technical points with reference to numbers—

Mr. BLANDFORD. We will take care of it.

Mr. BATES. Be handled by the staff. We will just stick with the substantive matters.

Mr. O'NEILL. Fine.

SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency retirement and disability system, referred to hereafter as the system.

Mr. BENNETT. There is something wrong right there. That sounds like a general proposition.

Mr. HARDY. This is where you are going to insert that "for a limited number."

5861

Mr. BLANDFORD. "For a limited number."

Mr. O'NEILL. "For a limited number," and so forth.

Mr. BLANDFORD. "For a limited number of employees."

Mr. O'NEILL. Period. [Reading:]

(b) The Director shall administer the system in accordance with such rules and regulations and with the principles established by this Act.

ESTABLISHMENT AND MAINTENANCE OF FUND

SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency retirement and disability fund which shall be maintained by the Director. The Central Intelligence Agency retirement and disability fund is referred to hereafter in this title as the fund.

Mr. BENNETT. Now right there, again this reads as if it is a general retirement thing. I am wondering if it should be given such a general title and general aura, when it is for a specialized minority of your employees.

Mr. O'NEILL. Although it is for a minority, it would be a separate and distinct special fund for the handling of this activity.

Mr. BLANDFORD. I think we could add the words on line 18, after the word "fund", "for a limited number of employees."

Mr. HARDY. If you have got it covered in section 201, I don't know why you need it here.

Mr. BLANDFORD. It is just to repeat.

Mr. RIVERS. Then you are coming to the participants, that is coming up.

Mr. HUDDLESTON. This merely lists the title of the fund.

General CARTER. If we insert the words—we have already defined this, "hereafter referred to as the system." So if we use "the system" throughout, I think we are covered, sir.

Mr. RIVERS. I think it is plain enough.

Mr. BATES. Right.

General CARTER. Yes, sir.

Mr. O'NEILL. In explanation of this section, the section gives the director the authority necessary to establish and maintain a retirement system and to prescribe rules and regulations governing its administration.

Mr. BLANDFORD. Now obviously in connection with this, the 6½ percent contribution will go into this fund and that money, in turn, will be invested in Government bonds, and so forth. Will the general rules of investment, as applies to the civil service retirement fund, apply to this fund?

Mr. O'NEILL. The present considerations would be that this would be handled in Government investments, yes, sir.

Mr. BLANDFORD. Government investments. Now, this will then necessitate a separate appropriation hereafter for the Government's contribution, and also for any additional annuities that may be added by Congress at a later date which is not carried in the fund, and it is understood, therefore, that with this language, this, in effect, means that you will have to obtain appropriations at a later date and also will require appropriations for any add-on's to the program which may come about as a result of any additions in annuities that may be hereafter provided for Government employees who are covered.

5862

Mr. O'NEILL. That is correct, sir.
Next subtitle:

ESTABLISHMENT AND MAINTENANCE OF FUND

SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency retirement and disability—

Mr. BLANDFORD. You already read that.

Mr. O'NEILL. Sorry. Our explanation on that would be the same as we have previously covered.

Mr. RIVERS. To "Participants".

Mr. O'NEILL (reading):

PARTICIPANTS

SEC. 203. The Director may designate from time to time such Agency officers and employees, hereafter referred to as participants, who shall be entitled to the benefits of the system. Any officer or employee who has completed fifteen years of service with the Agency and whose career at that time is adjudged by the Director to be qualifying for the system shall remain a participant of such system for the duration of his employment by the Agency.

Period.

Mr. BATES. Now that is new language there.

Mr. BLANDFORD. Yes, sir.

Mr. O'NEILL. That is new language.

Mr. BLANDFORD. That is what you suggested, as a matter of fact, yesterday. Is that satisfactory?

Mr. BATES. That is what I had in mind. Is it satisfactory?

General CARTER. Yes, sir.

Mr. RIVERS. It sounds good to me.

Mr. O'NEILL. This would insure that an individual in the system who has had 15 years of service would know at that time that he was not in any danger of being moved out of the system at a later date.

Mr. RIVERS. I think that would cover it.

Mr. O'NEILL. In addition, this section necessarily deviates from the comparable provisions of the Foreign Service Act, since Foreign Service officers are automatically covered by virtue of their appointments under the Foreign Service Act. However, only a limited number of Agency employees will serve under conditions which will warrant other than normal retirement considerations, and those who are to be designated as participants, pursuant to this section, will undergo a rigid selection process.

Mr. BLANDFORD. May I suggest at this point the possibility of these words: "shall at his election remain a participant for the duration of his employment by the Agency."

Would there be any advantage or disadvantage at that point to the individual to have—

Mr. RIVERS. To make an election?

Mr. BLANDFORD. To have this done at his election?

Mr. HARDY. I think what you are talking about, there could be a situation and I can't think of one, but there might be a situation under which a person would have retirement credits, availability of retirement under another system which might be adversely affected by his being required to stay under this.

Mr. BLANDFORD. That is really what I am trying to say. I can't visualize the situation.

Mr. HARDY. I can't either, but it is a possibility.

5863

Mr. RIVERS. He may jump from security to insecurity.

Mr. HARDY. You might even have a situation where a person would be eligible for military retirement and fall in this category, also, and it might be to his disadvantage if he were by statute compelled to stay in this system.

Mr. RIVERS. Why don't we ask the general?

Mr. HARDY. It wouldn't hurt anything to put "at his election" in there.

Mr. O'NEILL. All right.

Mr. RIVERS. Why don't we ask General Carter.

You come under that category. How many years did you have?

General CARTER. Thirty-two years, sir.

Mr. RIVERS. How did this thing affect your—

General CARTER. I am not eligible.

Mr. BLANDFORD. You are on active duty, aren't you?

General CARTER. Yes, sir, I am on active duty. I am not eligible.

Mr. RIVERS. If you weren't, you would have had to have a special act of Congress.

Mr. HARDY. No.

Mr. RIVERS. We did.

Mr. BATES. Yes, we did.

Mr. RIVERS. Wait a minute, we had to do it for—

Mr. BATES. For General Swing.

Mr. HARDY. Yes, but CIA specifically is permitted a certain number—

Mr. BLANDFORD. The Deputy Director, by law, may be a member of the military.

General CARTER. Yes, sir. I am assigned there, sir, by the military.

Mr. RIVERS. But you wear two hats, really.

General CARTER. No, sir, I am afraid not, Mr. Chairman.

Mr. RIVERS. Aren't you military?

General CARTER. Yes, but I am a statutory appointment of the President.

Mr. BLANDFORD. Doesn't the law say that the Director or Deputy Director, but not both, may be military?

General CARTER. Yes, sir, that is true.

Mr. BATES. You get paid by whom, CIA?

General CARTER. I get paid by the military, but the Department of Defense is reimbursed by the CIA for my pay.

Mr. BATES. Right. Now on your retirement you will be retired as a military officer?

General CARTER. Yes, sir.

Mr. RIVERS. You will get 5 percent under our pay bill, won't you?

Mr. BATES. If you were a reservist you would get both.

Mr. RIVERS. If you were a reservist you could do it.

General CARTER. Yes, sir.

Might I suggest, sir, on line 6, after the word "system," if we take out the word "shall" and say "may elect to."

Mr. HARDY. That would do it.

Mr. RIVERS. I think that would cover whatever Mr. Hardy has in mind.

General CARTER. This gives all of the election, then, to the individual, I think is the purpose of this.

5864

Mr. RIVERS. That is right, I think that would cover it. I don't know of a case.

Mr. HARDY. Actually, you could have a case right now, because CIA is permitted to employ up to 15 retired military officers, is it?

General CARTER. Yes, sir.

Mr. HARDY. So if you had a military officer employed by CIA presumably he is also drawing military retirement, isn't he?

Mr. BLANDFORD. They are subject to the Dual Compensation Act, but not subject to the Dual Employment—

Mr. RIVERS. Not unless he is a Reserve.

Mr. BLANDFORD. The Regular is subject to the Dual Compensation Act, but not subject to the dual employment statute.

Mr. RIVERS. That is right.

Mr. HARDY. This is the only agency I know of that has that special permission.

Mr. BLANDFORD. No, sir, there are many other agencies. The Veterans' Administration can hire 25 retired officers who are not subject to the Dual Employment Act. The original CIA request in 1948, was to hire 25 retired officers without regard to the dual employment or dual compensation provisions. We reduced it to 15 who could be hired without the dual employment but subject to the Dual Compensation Act, which means that the only Regular officer who could be employed without regard to the dual compensation provision is an officer retired for combat wounds or as a result of an instrumentality of war.

Mr. HARDY. Anyway, I think this wording—

Mr. RIVERS. Now the next thing is section 204, "Annuitants."

Mr. O'NEILL (reading):

ANNUITANTS

SEC. 204. (a) Annuitants shall be persons who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, dependent widowers, children, and beneficiaries of participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this title the term—

(1) "Widow" means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or is the mother of issue by such marriage.

(2) "Dependent widower" means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by such marriage, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

(3) "Child" means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before age eighteen, is incapable of self-support. In addition to the offspring of the participant and his or her spouse, the term includes (a) an adopted child, and (b) a stepchild or recognized natural child who received more than one-half of his support from the participant.

Mr. BLANDFORD. Is there anything in that section that in any way is different from the Foreign Service Act?

Mr. O'NEILL. No, sir, this section defines annuitants who may be eligible for benefits under the retirement system, and contains nothing else.

Mr. BLANDFORD. I call the subcommittee's attention to only one feature and that is the language which says "or is the mother of issue

5865

by such marriage," which might mean the mother of an illegitimate child would be eligible for the benefits, which apparently is true for the Foreign Service Act.

Mr. O'NEILL. Yes, sir.

Mr. HARDY. I don't know whether this is a good idea. I had it marked, myself, because this is the same kind of thing that we hashed over thoroughly in the Survivors Benefits Act—what constituted a widow, and so forth. I was a little troubled with providing coverage for these illegitimate children.

Mr. BENNETT. We have a pattern already. It is easier to follow the pattern.

Mr. HARDY. You want to protect the wives.

Mr. BATES. What is the language in the veterans' compensation laws?

Mr. BLANDFORD. I don't believe the VA recognizes illegitimacy, although you can legitimize children.

Mr. BLANDFORD. What is the subcommittee's pleasure?

Mr. HARDY. You want to protect a mother of an illegitimate child, make her a beneficiary?

Mr. BLANDFORD. Or do you want to protect the illegitimate child?

Mr. HARDY. That is different.

Mr. BENNETT. As a practical matter, you are protecting the child, they have it in the Foreign Service, so let's do it here.

Mr. RIVERS. You want the measure, don't you?

Mr. O'NEILL (reading):

PART B—COMPULSORY CONTRIBUTIONS

SEC. 211. (a) Six and one-half per centum of the basic salary received by each participant shall be contributed to the fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Agency to the credit of the fund.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

Mr. RIVERS. It never occurred to me that you would have to put all that in there to take out 6½ percent.

Mr. O'NEILL. Yes, sir, you do. This section provides for contributions to the retirement fund, as you mentioned both by the employee and by the Agency at this rate of 6½ percent of basic salary, which is the same under both the Foreign Service retirement system and the civil service retirement system.

Mr. RIVERS. Go ahead.

Mr. BLANDFORD. This means that once a person has put in the fund he has no choice as to whether or not he wants to be in it or not, the 6½ percent will be deducted.

Mr. O'NEILL. Yes, sir.

Mr. BLANDFORD. So civil service is optional?

Mr. HARDY. Civil service is not optional.

Mr. RIVERS. Not if you get under it, you are under it.

5866

Mr. BLANDFORD. But you have to sign a piece of paper to say you want to get in it.

Mr. HARDY. No, that is legislative only.

Mr. BLANDFORD. That is just for that?

Mr. HARDY. Yes. You elect, but the others don't.

Mr. BLANDFORD. I see. I thought everybody was like me.

Mr. HUDDLESTON. You have to resign to withdraw your fund.

Mr. RIVERS. This is interesting when you write these acts in the organic form, you start off the basis for the whole system. You learn a lot about it.

Mr. HARDY. Six and a half percent is the same rate of deductions that will apply to all your employees, is that right?

Mr. O'NEILL. That is right.

General CARTER. Everyone.

Mr. RIVERS. Everybody.

Mr. HARDY. You would have trouble if you ever get to a point where you have a differentiation in the rate.

Mr. RIVERS. This is the same for everybody.

Mr. HARDY. All right.

Mr. RIVERS. Let's go to the next section.

Mr. O'NEILL (reading) :

PART C--COMPUTATION OF ANNUITIES

SEC. 221. (a) The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest five consecutive years of service, for which full contributions have been made to the fund, multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 251 and 252.

Mr. BLANDFORD. Thank you very much, you just saved me a question.

Mr. O'NEILL. Very well.

In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted.

(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband, commencing on the date following such participant's death and terminating upon the death of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2½ per centum of any amount up to \$2,400 he specifies as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of (i) 40 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$600; or (iii) \$1,800 divided by the number of children.

(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of (i) 50 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$720; or (iii) \$2,160 divided by the number of children.

Mr. BLANDFORD. Does that mean that the maximum benefit that would be paid to the family of a deceased member of your organization who participates would be \$2,160, divided by the number of chil-

5867

dren? In other words, if a man died with two children, \$2,160 is still the maximum amount that would be paid to those children?

Mr. O'NEILL. To the individual child.

Mr. BATES. You only get the smallest; you only get the \$720.

Mr. BLANDFORD. That is what I am saying; \$2,160 is the maximum.

Mr. RIVERS. Maximum.

Mr. BLANDFORD. To be paid to those two children. That seems like an awful small amount for a man who——

Mr. O'NEILL. That amount, the smallest of these three amounts, would be the amount paid each child.

Mr. BATES. You wouldn't get that \$2,160 divided by 2; you would get the \$720 each.

Mr. O'NEILL. Yes, sir.

General CARTER. If there were two children; that is correct.

Mr. RIVERS. Or \$2,160——

Mr. BATES. It is the smallest, Russ.

Mr. BLANDFORD. Yes; they wouldn't each get \$2,160, would they?

General CARTER. No, sir.

Mr. BLANDFORD. Supposing this fellow has been in the fund for some time, and actually the fund, the children, say, are 16 and 17; there is no surviving wife. And he has contributed \$15,000. And you are going to pay two children \$720 a year for the next 2 years. What happens to the rest of that money?

Mr. O'NEILL. There is provision for return of excess amounts paid in, sir.

Mr. BLANDFORD. All right. Go ahead.

Mr. BENNETT. Can we refer back here a minute, because I am afraid in our history of this legislation about this question of widows and children we have left something in the record which was not the intention of the statute, as far as Foreign Service is concerned.

It says here, section 204, subsection 1, page 4, if you read this section about "mother of issue by such marriage," you will see it doesn't refer to illegitimate children, per se. Grammatically it refers to a widow who must always be a surviving wife.

Mr. O'NEILL. Yes.

Mr. BENNETT. It could be a surviving wife married for 2 years or married for less than 2 years, and there was a child.

Mr. O'NEILL. Yes, sir.

Mr. BENNETT. The only way "illegitimate" would ever come into this picture would be if there was an illegitimate child occurred before the marriage and then there were a subsequent marriage. That is fantastic, because if you try to make this into saying "widow is the mother of issue by such marriage," you are referring back to a marriage, so it doesn't refer to an unmarried person at all. This refers only to married people.

Mr. WOODYEAR. May I make a comment on that?

Mr. RIVERS. Go ahead.

Mr. WOODYEAR. The Department of State's interpretation on that has been exactly as Mr. Bennett has described it, a combination of marriage and issue by such marriage. The illegitimate children, if any, are covered by the phrase "natural child" on the next page. If a man has an illegitimate child he recognizes, and pays the support of, we would not deny him that right.

5868

Mr. BENNETT. I just wanted to clear this up. We were creating something not in the statute.

Mr. WOODYEAR. That is not interpreted by the Department that way.

Mr. BLANDFORD. I am delighted to know that, but point out I would be happy to take a case to court of claims without this legislative history and say that widow can also be defined as the mother of issue, and the mother does not have to be married.

Mr. BENNETT. It says "by such marriage."

Mr. BLANDFORD. But the "or" is there.

Mr. BENNETT. The "or" referred to "was" and "is."

Mr. BLANDFORD. It might.

Mr. BENNETT. Let's don't make it any worse. If they have construed it this way, all right.

Mr. BLANDFORD. That is why I am trying to make the record, to prove or establish your point. I just won't want the GAO at some future time, if this is the intention, that it is not to be applied to the unmarried mother of children, then the record, as you say, ought to point it out, because certainly I got the wrong interpretation of it.

Mr. WOODYEAR. Here you are defining "widow" and not the mother of a child, and your interpretation would make the mother of an illegitimate child a widow, and that is not intended.

Mr. BENNETT. Correct. Grammatically it is not possible.

Mr. WOODYEAR. It is the "natural child" on the next page that does take care of the "illegitimate."

Mr. RIVERS. Let the record show that, and let the record show that the intent of the Congress is as Mr. Woodyear and Mr. Bennett explained it, and GAO can't go off the track, because in the construction of any statute you have to go to the legislative history.

Mr. BLANDFORD. May I put this in the record at this point, section 204(a) (1) in the definition of "widow" means a person who has been married to a participant for 2 years or a person who has been married to a participant for less than 2 years who has children by the participant.

Mr. BENNETT. Correct.

Mr. RIVERS. I think that covers it.

Mr. BLANDFORD. All right.

Mr. RIVERS. Then any construction would have to go along—that would clearly show the intent of the Congress. It is the only place you can get it.

Go ahead. Thank you, Mr. Bennett.

Mr. O'NEILL (reading):

(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant.

(e) The annuity payable to a child under paragraph (c) or (d) of this section shall begin on the first day of the next month after the participant dies and such annuity or any right thereto shall be terminated upon death, marriage, or attainment of the age of eighteen years, except that, if a child is incapable of self-support by reasons of mental or physical disability, the annuity shall be terminated only when such child dies, marries, or recovers from such disability.

(f) At the time of retirement an unmarried participant may elect to receive a reduced annuity and to provide for an annuity equal to 50 per centum of the reduced annuity payable after his or her death to a beneficiary whose name shall be designated in writing to the Director.

5869

Mr. HARDY. Is that provision in the Foreign Service Act?

Mr. BLANDFORD. Yes, but not in the civil service retirement fund.

Mr. HARDY. I am questioning that particular provision, because this hasn't anything to do at all with need or dependency. This, in effect, would, if I understand it—and maybe I don't—would permit an annuitant to select anybody that he chose.

Mr. BLANDFORD. That is right.

Mr. BATES. Like an insurance policy.

Mr. HARDY. Yes.

Now, I have a little trouble seeing how you would justify Federal contributions for that. I think it would be all right if the annuitant were paying the entire cost of the system, but where you have a substantial amount, a substantial part of it as contributions from the Federal Treasury, I doubt the wisdom of that.

Mr. RIVERS. Let's hear from——

Mr. HARDY. I will go along with it for dependents, but——

Mr. RIVERS. Let's hear from Mr. O'Neill.

Mr. O'NEILL. If I may, sir, at that point, the annuity is fixed. His rights and benefits are established. He is now electing to take a reduced annuity in favor of providing someone he would designate to receive part of his annuity after his death.

Mr. RIVERS. He built up some kind of an estate and it looks to me like if you let a man who happens to have children—give him more consideration than the man who doesn't, he ought to be able to do something like that. I wouldn't want to take that out.

Mr. HARDY. I think you have an entirely different set of facts.

Mr. BLANDFORD. Mr. Hardy has a point here, because what you are really doing, Mr. Chairman, is you are giving a participant who is unmarried the right to select some friend of his——

Mr. RIVERS. It might be his mother.

Mr. BLANDFORD. Well, his mother is covered, a blood relative—I mean a widow or a child or a mother would be covered by the law. But here, Mr. Hardy, I think, has a very good point, that here you are saying that you can take this person who has no relationship to the participant and he can gain——

Mr. BATES. May not. It might be his brother, it might be his sister with a bunch of kids.

Mr. BLANDFORD. It could be, it could be anybody.

Mr. RIVERS. Let's hear more explanation. I don't know that I am ready to take it out.

Mr. BATES. Let's look at the rest of it. Is he going to be charged 6½ percent regardless, are we going to do that, even though he can't execute some provision like that?

Mr. BLANDFORD. The money becomes part of his estate. If there is no eligible beneficiary, then the amount that he has contributed I assume becomes a part of his estate, and would be distributed according to the laws of the State in which he died, or according to his will. I think Mr. Hardy's point is well taken in this respect. Here is the Government, contributing 6½ percent, and then any future increases in annuities come along which are all at the taxpayer's expense will accrue to the benefit of this beneficiary. At least it ought to be restricted to a blood relative or something like that.

Mr. HARDY. Let me explain my thinking about it.

Mr. RIVERS. Go ahead.

5870

Mr. HARDY. Because this may or may not be valid, but this is the way I look at it. Actually, the costs, the Federal Government's cost is increased whenever you tie, at least it is expected to be increased whenever you tie it to survivorship. I think we can fully justify an increase in the Government's cost where survivorship is related to the dependents, or perhaps to even blood relatives, but I think it is recognized that a cost of survivorship increases the total actuarial value of a person's estate.

You are expanding the Government's obligation in order to permit an annuitant to make a better provision for his survivors, I have a little trouble justifying increasing the Federal cost to increase the estate of an annuitant who doesn't have dependents, and it just happens to be somebody that he wants to pass his benefits to.

Mr. RIVERS. Let's hear what you have to say.

Mr. O'NEILL. While you were speaking I refreshed my own recollection. I noticed there are severe penalties placed on the individual for exercising this election.

Mr. RIVERS. Read that.

Mr. O'NEILL. Continuing with section 221(f):

The annuity payable to a participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the retiring participant, but such total reduction shall not exceed 40 per centum. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as prescribed by the Director. The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.

There are stated, sir, in explanation, three restrictions; one, the reduction; two, requiring the beneficiary to have a physical examination; and third, the termination of all benefits and no refund of excess moneys after the death of the beneficiary.

Mr. BLANDFORD. The beneficiary is not examined, the participant is examined. Frankly, I don't know why the participant should be given a physical examination. What are you trying to do—determine how long the participant is going to live, or how long the beneficiary? The beneficiary is the key to it—how long she is going to live. In one respect it is important from the viewpoint of how long this reduction in retirement income is going to take effect, but there is nothing in here, for example, in this language, that precludes me as a participant, unmarried participant, from electing a 2-year-old child who will live to be 150 years old, from being the beneficiary here. It is only going to be—the only reason they are examining me, I presume, is to determine how long I am going to live after I retire; but supposing the participant doesn't pass the physical examination, what do you prove?

Mr. RIVERS. The Director has some discretionary power there, that is what it gives him. Let's ask Mr.——

Mr. BATES. I can see a circumstance. Take a man who now is ready to retire but he is on his deathbed, take that situation, and all of a sudden he decides he wants to turn this money over to someone else.

Mr. RIVERS. To a girl he has been courting for 15 years.

Mr. BATES. He would have to pass the physical under this, wouldn't he?

5871

Mr. O'NEILL. Yes, sir.

Mr. HARDY. If he is ready to retire, he can draw out his retirement contributions, can't he, at this point, in this situation?

Mr. O'NEILL. No, sir, he cannot withdraw his money.

Mr. BLANDFORD. I think it is any time up to 20 years you can draw it out.

General CARTER. At the time he retires I believe the money he has put into it is sequestered in the fund and remains there for the purposes of paying his annuity. He cannot withdraw it in a lump sum.

Mr. HARDY. If he dies, then, before he has retired, then his estate would get back what he paid in.

Mr. O'NEILL. Yes, sir.

General CARTER. Yes, sir.

Mr. BENNETT. Is that so?

General CARTER. Yes, sir.

Mr. BENNETT. Is that true of all civil service retirement? You get back what you paid in?

Mr. BATES. Plus interest.

General CARTER. Yes, sir.

Mr. BATES. It used to be 4 percent. I don't know what the interest is now.

Mr. RIVERS. Let me ask a question, Mr. Blandford.

Now, you took this from the Foreign Service Act?

Mr. O'NEILL. Yes.

Mr. RIVERS. Maybe Mr. Woodyear can give us some kind of explanation. What is the reason for this, Mr. Woodyear?

Mr. WOODYEAR. The reason for this is the man has a vested interest in his retirement benefits which he has bought through the years and it is assumed if he is unmarried he has a right to make an election.

Mr. RIVERS. He had built up an estate in it.

Mr. WOODYEAR. That is right. This also is a provision under the civil service system. The civil service system goes further than the Foreign Service system does, in that an insurable interest must be established in the person that is designated as beneficiary who is not a relative.

Mr. BENNETT. That is not required here?

Mr. WOODYEAR. That is not required here.

Mr. BLANDFORD. This would be a valid provision here, if the person had to have an insurable interest in the individual. For example, you can always insure a relative, within restrictions, within certain States, but you can't insure—I couldn't insure Sonny Liston when he fights Lucius Clay if I decided he was going to make some money out of it.

Mr. RIVERS. You wouldn't have to.

Mr. WOODYEAR. I think almost without exception in the Foreign Service our system is a small one, not many examples, but such elections have been for distant relatives who were dependents of the participant.

Mr. BENNETT. That is the relative situation, where they are actually dependent, I think that makes a good deal of sense.

Mr. HARDY. I wouldn't have any trouble with that.

Mr. BATES. Let me ask, say he had two individuals, one who had a son, the other individual was unmarried but he had a nephew.

Now, under the first case, he can only get it to age 18, or is it, 21 unless there is something wrong with him?

5872

Mr. WOODYEAR. 21.

Mr. BATES. Now, let's take the situation of a nephew, he can get that reduced annuity the rest of his life if this individual so elects?

Mr. WOODYEAR. That is correct.

Mr. BATES. Is that right?

Mr. WOODYEAR. If the individual reduces his annuity by pretty close to 50 percent by the time he gets through. The nephew would be so much younger than he was, it would almost wipe out—

Mr. BATES. Not to exceed 40 percent, the total reduction. So if Uncle John wants to leave it to his nephew; that he can do?

Mr. WOODYEAR. That is true.

Mr. BATES. And this continues the length of the nephew's life?

Mr. WOODYEAR. Yes.

Mr. BATES. But the father of this other lad, he only gets it 2 or 3 years.

Mr. WOODYEAR. But such determination is at the discretion of the Secretary, and I would not think that the Secretary would approve or the Director would approve such election, unless that nephew was crippled or disabled or in some way so totally dependent that he would not be self-supporting. There is a discretion in effect there.

Mr. BATES. Where is that language about the discretion?

Mr. BENNETT. Let's restrict it to dependents. I think it ought to be. Unless it is, I think it ought to be out.

Mr. HARDY. I wouldn't have any trouble with dependents.

Mr. RIVERS. What about the word—

Mr. BATES. Can I get an answer?

Mr. WOODYEAR. That is implied, sir, in that "shall name, whose name shall be designated in writing to the Director."

Mr. BATES. I see no prohibition there.

Mr. WOODYEAR. That has been interpreted in the Department, the designation in writing to the Director presupposes his acceptance or rejection of such designation.

Mr. BATES. I can't read that into it.

Mr. HUDDLESTON. I can't.

Mr. WOODYEAR. That has been our interpretation of it.

Mr. BLANDFORD. How about adding the words, then, Mr. Chairman—and I think this may cure it: "whose name shall be designated and accepted in writing."

Mr. HARDY. That is still too broad; unless you tie dependents to it, I don't think you have helped.

Mr. BLANDFORD. At least you give the Director some leeway to turn it down.

Mr. RIVERS. He can do it now.

Mr. BENNETT. Why not change it to dependent or beneficiary?

Mr. RIVERS. What about the words "insurable interest"?

Mr. BLANDFORD. You get into trouble.

Mr. RIVERS. I can conceive of a situation: I live in a place where they have a lot of different nationalities and most Europeans have very close family ties, Italians, Germans, all of them. I can think of an uncle who wants to take care of a nephew, as Mr. Bates was talking about; very close, never got married, and I think he has built up an estate of some sort, even though the Government has contributed all they had, at least he has contributed 40 percent. I don't think we should deny him—

5873

Mr. HARDY. I don't see that. I don't know where you get the 40 percent from.

Mr. RIVERS. If they put in 60 percent and the Government puts in—

Mr. HARDY. The Government puts in 61½ percent but that doesn't necessarily take care of the requirement. It wouldn't nearly—

Mr. RIVERS. You say the Government put it all in; the Government doesn't put in more than he does.

Mr. HARDY. Yes; it does.

Mr. RIVERS. But for the accident of not being married he is denied any discretion from doing anything with whatever he built up, call it what you want.

Mr. HARDY. I wouldn't have any problem with permitting him to designate up to the actuarial equivalent of his investment plus the 61½ percent of the Government, but when you go into dependents you extend this thing over a long period of time, and the costs against the fund run way up and in all probability will involve substantial additional appropriations to keep the fund going.

Mr. BENNETT. Unless the word "dependents" is added before the word "beneficiary" I don't like it and would like to strike it.

Mr. BLANDFORD. I would like to suggest this language, Mr. Chairman: On line 25,

payable after his or her death to a beneficiary dependent upon the participant for over one-half of his support, whose name—

Mr. BENNETT. That is better yet.

Mr. HARDY. I will buy that.

Mr. BENNETT. Let's buy that.

Mr. RIVERS. How does that sound, General?

Mr. WOODYEAR. Might I make a comment there, Mr. Chairman?

Mr. RIVERS. Yes.

Mr. WOODYEAR. The Department has draft legislation now in which it is proposed that this be clarified by using the term "having an insurable interest," and because of the possible impact this might have upon the Foreign Service Act—

Mr. HARDY. Maybe we should do it now, then, in order that it would have an impact.

Mr. BENNETT. Mr. Blandford's suggestion is better anyway.

Mr. RIVERS. He is trying to agree with you, if you all let him.

Mr. WOODYEAR. We would prefer "insurable interest" rather than "dependent" because there may be situations which I can't—

Mr. BLANDFORD. Let me ask you. This takes me back to law school, when I took a course on insurance. I found every State in the Union had different laws on who and what was an insurable interest.

Mr. RIVERS. I took the same thing and I don't remember anything about it.

Mr. BLANDFORD. I am going to fish now.

What would determine the insurable interest, the laws of the District of Columbia, in which the fund is payable from, the situs of the fund, or the domicile of the beneficiary?

Mr. WOODYEAR. I am sorry, I could not answer that, Mr. Blandford. The Civil Service—

Mr. BLANDFORD. You see the problem you are going to run into?

Mr. WOODYEAR. I see it.

5874

Mr. BLANDFORD. In some States a cousin—you may have an insurable interest in a cousin, in other States a cousin is not insurable, because there is no insurable interest. This would be my only reaction, would be that I don't know where you look to determine whether there is an insurable interest.

Mr. WOODYEAR. I suspect that the Civil Service Commission has devised ground rules based upon the combination of insurable interest rulings, but I don't know the answer to that, sir.

Mr. BLANDFORD. I think we ought to——

Mr. HARDY. I will accept the language suggested by Mr. Blandford.

Mr. BENNETT. I like that best.

Mr. RIVERS. Let's tentatively——

Mr. BLANDFORD. Put that in there.

Mr. RIVERS. Let's tentatively accept that and we will come back to it later.

Mr. HUDDLESTON. Repeat that language.

Mr. BLANDFORD. "Dependent upon the participant for over one-half of his support."

Mr. BENNETT. Where does that go?

Mr. BLANDFORD. Right after the word "beneficiary" on page 7, line 25.

Mr. RIVERS. Of course, as a practical matter, if you get any of these people who are not married and he starts looking around for some of his people to contribute to——

Mr. HARDY. If he is doing that, I wouldn't be concerned with it.

Mr. RIVERS. A lot of them do anyway.

Mr. HARDY. Yes.

Mr. HUDDLESTON. I would like to inquire of Mr. Blandford what his intention there is. Suppose a child is dependent on the participant for one-half of his support and that child grows up, does he continue to draw this reduced annuity?

Mr. BLANDFORD. He would under this language, because once it vests, it continues.

Mr. BENNETT. That is better than it was.

Mr. RIVERS. A child is the issue of a man.

Mr. HUDDLESTON. No; not this thing that Russ is talking about.

Mr. BENNETT. There is no other retirement system that allows that. This would be the only one except for the Foreign Service.

Mr. BLANDFORD. The only point I am making is that the odds are—I am thinking of Mr. Bates' point—the odds are that a participant who elects to cover a person who is dependent upon him for one-half of his support will invariably be a relative.

Mr. HARDY. More than likely.

Mr. BLANDFORD. Or a close relative. I think Mr. Bates' point is a good point. There are a lot of cases of uncles who have supported nephews and nieces, sent them through school, and all sorts of things, provided clothing for them and everything, who are not eligible as beneficiaries under our definition of "beneficiary," and we don't want to close the door to this unmarried participant, because the chances are there will be somebody among his relatives who will be dependent upon him.

This precludes naming someone in Paris that he has known for 5 or 6 years.

5875

Mr. BENNETT. Mr. Huddleston's point has not been touched on. He is making the point that the other kind of dependent, like a child only gets it for a certain period while this one is going to get it until they are 150.

Mr. BLANDFORD. With quite a considerable reduction in the amount payable.

Mr. BENNETT. I am willing to settle on that.

Mr. RIVERS. What you are overlooking, though, let's say—and General Carter is going to have to be the man who has to make the determination. All General Carter has got to say to my satisfaction, he has proved that so and so was sufficiently dependent on him, and I have concluded that he is, and that is it.

It all goes back to the Director.

Mr. HARDY. But if you don't put something in here to tie it to dependency he wouldn't have a leg to stand on.

Mr. RIVERS. What I am trying to say is yours would in some measure give you something to work on.

General CARTER. I would like to have Mr. Echols refer to the civil service system.

Mr. ECHOLS. As Mr. Woodyear indicated, the civil service retirement system has a somewhat similar provision for a nondependent, a nonrelative, to receive the survivor benefit. I quote here from—read from the Civil Service pamphlet describing their particular provision. The question is, what is meant by an insurable interest?

And its states:

If the person named can reasonably expect to receive some kind of financial benefit from the continuance of the life of the retiring employee, an insurable interest exists. Generally speaking, any near relative would have an insurable interest in the retiring employee. If a person other than a near relative is named, proof of an insurable interest may be required.

So this is the basis upon which the Civil Service——

Mr. HARDY. That is a regulation that might be subject to a court contest, where you have got just the words "insurable interest." Unless it is defined in the act, itself, I should think a good lawyer might have a field day with that.

Mr. ECHOLS. I am sure a suit could develop.

Mr. HUDDLESTON. What is the Civil Service Act, what does their provision say?

Mr. RIVERS. Insurable interest.

Mr. HUDDLESTON. I want to get the wording of it.

Mr. BLANDFORD. I tried to find that and couldn't find it.

Mr. RIVERS. Didn't you just get through saying "insurable interest"?

Mr. BENNETT. Under civil service does it allow those people who have insurable interest—can they get it until they are 100, even though they are not dependents?

Mr. RIVERS. Once it is established, it is established.

Mr. ECHOLS. It is indefinite.

Mr. BENNETT. How about a child, an actual son? In other words, you are doing more for people that just have an insurable interest, whose interest is not as close, than you are for actual children.

General CARTER. You are making them pay a lot more for it.

Mr. BLANDFORD. They are taking a reduction in income to do this.

5876

This is where you get into your deathbed election, and this is where the physical examination comes in. Apparently what this section means is that if a man, if a participant is in pretty bad shape physically, the Director could refuse to accept, or refuse to designate this person as the beneficiary. I assume that is what it means. And therefore this is an actuarial section, where the Director must conclude that there will be a sufficient contribution on the part of the participant to at least justify the election.

Would that be a reasonable interpretation of this section?

Mr. ECHOLS. Yes.

Mr. HARDY. I don't know how you can interpret it that way.

Mr. BLANDFORD. That is the only way I can see it. I don't see what the language would mean that the participant must pass a physical examination, you see. It is only aimed at preventing a deathbed election, that is the first thing.

General CARTER. That is the purpose.

Mr. BATES. That is all I can see in it.

Mr. ECHOLS. Yes.

Mr. BLANDFORD. This, therefore, must be based on the premise that from an actuarial viewpoint the odds are that the money withheld from his retirement over a period of years will be sufficient to pay for the amount of the annuity that will be paid to the beneficiary who is named. This is the only thing. And at that point I assume, although the bill doesn't say this, that in determining his physical condition the age of the beneficiary must be taken into consideration.

In other words, a man with a heart condition, who could be expected to live for 10 or 15 years, might be allowed to designate somebody who, say, is 50 years old, whereas a man with a heart condition, where he would only have this money withheld for 10 years, might not be allowed to participate in the program if he was going to name some 2-year-old nephew who might live to be 95.

Mr. HARDY. If this gives that much discretion to the Director, why, it is the craziest screwball thing anyhow. We ought not to ever permit that kind of a determination. You put the Director then in the position of being the father of everybody who retires.

Mr. RIVERS. He is going to have to assume a lot of responsibility.

Mr. HARDY. I know, but he ought not to make that kind of decision.

Mr. BLANDFORD. I can only suggest what the words "No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as prescribed by the Director" mean?

Now, there has to be a reason for this; it must be based upon an actuarial equivalent.

Mr. HARDY. Then you would have to say that anybody who retires for disability would be ineligible to exercise this provision. And I don't think there is anything in here—

Mr. BLANDFORD. No; it says it could be made ineligible, but it doesn't mean he is ineligible.

Mr. HARDY. Then you give that discretion to the Director? We ought not to give that discretion to anybody. I don't think the Secretary of State ought to have that discretion in the Foreign Service.

Mr. OSMERS. Mr. Chairman.

Mr. RIVERS. Mr. Osmers.

5877

Mr. OSMERS. I have listened to the dialog with great interest and occasional humor. However, aren't we losing sight of the fact that the Director of this Agency has a very important national responsibility for the safety and the security of the Nation, and aren't we burdening him with a great many personnel matters which, in effect, will cause him to become a judge of borderline personnel cases, such language as "shall satisfactorily have passed a physical examination as prescribed by the Director."

We also have him prescribe the type of physical examination, and it would seem to me, Mr. Chairman, that rather than to keep chewing on this particular point, that this section be rewritten so that the Director will understand and Congress will understand what an unmarried person can expect who is employed under this law.

Mr. RIVERS. I think if we get out here and concoct all kinds of hypotheticals—

Mr. BATES. This has got to be rewritten. We don't know what it means ourselves.

Mr. RIVERS. We will be here until doomsday. Why don't we do just as Mr. Osmers has suggested? Because the Director is only going to make—he is only going to set these things up once, he is going to delegate these things to somebody. That is the way it is going to be handled.

Mr. OSMERS. Obviously.

Mr. RIVERS. I kind of favor that insurable interest.

Mr. HARDY. If you define "insurable interest" in the act itself, I wouldn't object to it, otherwise I think you would have to tie it to dependents.

Mr. HUDDLESTON. I would like to have the civil service law with relation to this read so we can see it. Do you have it?

Mr. ECHOLS. I have it here, sir.

Mr. RIVERS. Wait a second. Mr. Osmers is on.

Mr. OSMERS. I certainly agree with Mr. Huddleston, that we should have that read. Again, of course, the Director, quite properly, would delegate an authority as complicated and detailed as this. But on the other hand, an employee who did not agree with the decision of the delegated party would certainly, under the law, appeal, if you will, to the Director, because of this language. And this, again, engages the Director in personnel disputes and affects his ability to enjoy the confidence of other members of the Agency, if they should disagree with one of his personnel decisions.

Mr. RIVERS. Of course you can't delegate that to anybody else, you have the directive. I don't know how you can get around that. He has to assume full responsibility.

Go ahead and read what you have there.

Mr. ECHOLS. Each of you have it in your books, sir, if you would like to read it yourself, or I can read it.

Mr. BLANDFORD. What page is that on?

Mr. ECHOLS. Tab 5, page 18, upper right-hand corner.

Mr. RIVERS. Civil Service Retirement Act.

Mr. ECHOLS. Upper left-hand corner. Paragraph H.

Any unmarried employee or member retiring under section 6 or 8 and found by the Commission to be in good health may, at the time of retirement, elect a reduced annuity in lieu of the annuity as hereinbefore provided, and designate in writing a person having an insurable interest in the employee or member to

5878

receive an annuity after the retired individual's death. The annuity payable to the employee or member making such election shall be reduced by 10 percent of an annuity as computed in section 9 and by 5 percent of an annuity so computed for each full 5 years, the person designated is younger than the retiring employee or member, but such total reduction shall not exceed 40 percent.

Mr. HUDDLESTON. Now that is the provision that applies to all CIA employees except the ones covered by this retirement system?

Mr. ECHOLS. Yes, sir.

Mr. HUDDLESTON. Why can't we incorporate that in there?

Mr. BLANDFORD. Why don't we substitute that language for this language?

Mr. HARDY. I think that is a good answer to it.

Mr. RIVERS. That would be a good answer.

Mr. OSMERS. With the word "Director" instead of "Commission."

Mr. HARDY. I would prefer also to have a definition of "insurable interest" incorporated in the statute and not depend on regulations for it.

Mr. BLANDFORD. I don't think you could—I mean I think what you have in this case, Mr. Hardy, is a long line of decisions now that the civil service has had this law, and for us to attempt to define an insurable interest would create a new regulation.

Mr. HARDY. If that is sufficiently well-established.

Mr. RIVERS. We certainly can't afford to give these people any less than the regular civil service employees. We positively can't do that.

Mr. BENNETT. So let's give them exactly what they have got.

Mr. BLANDFORD. And leave the definition of an insurable interest to the interpretations placed upon it by the Civil Service Commission.

Mr. RIVERS. That would be a good solution.

Mr. BLANDFORD. All right, let's rewrite that section then.

Mr. RIVERS. Mr. Osmers always helps us.

General CARTER. I might point out, Mr. Chairman, there is no difference in the reduced annuity or the payable annuities, it is purely the manner in which it is administered and this is entirely acceptable to us. I think it is a fine thing.

Mr. RIVERS. Mr. Blandford, you check it.

Mr. BATES. The only thing that still bothers us is that good health provision.

Mr. BLANDFORD. Well, that is the actuarial equivalent concept, that is all. This is the very thing that you discussed here, to prevent the election being made on the deathbed to provide a continuing annuity.

Mr. BATES. I wonder if somebody could talk this over with Civil Service and find out exactly.

Mr. RIVERS. Mr. Blandford, you get commander—what is that fellow's name over there.

Mr. BENNETT. I think it would be better to comply with Civil Service.

Mr. RIVERS. Who is that retired officer from the Supply Corps?

Mr. BLANDFORD. Commander Downs.

Mr. RIVERS. Yes.

Mr. BLANDFORD. Actually, I think this ought to be checked with Civil Service.

Mr. RIVERS. Let's do that. Let's go to the next provision.

We don't want to get to nitpicking. We are doing too well.

5879

Mr. O'NEILL (reading):

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS—

Mr. RIVERS. What page are you on?

Mr. O'NEILL. Page 9. [Reading:]

RETIREMENT FOR DISABILITY OR INCAPACITY—PHYSICAL EXAMINATION—RECOVERY

SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a) (2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the Director, be retired on an annuity computed as prescribed in section 221.

Mr. RIVERS. This is the Ways and Means language.

Mr. BLANDFORD. "Incurred in the line of duty" was the recommendation of the Ways and Means Committee.

Mr. O'NEILL. On line 8 I left out the words "incurred in the line of duty." I shall go back and read.

Mr. RIVERS. All right.

Mr. O'NEILL (reading):

SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a) (2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury incurred in the line of duty not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the Director, be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his grade in the Agency.

Mr. BLANDFORD. That raises a question.

Mr. BATES. Sure does.

Mr. BLANDFORD. Incurred in line of duty, it is all right for the Ways and Means to talk about the taxability of this, but when you put incurred in line of duty in this provision you are saying that an individual with 19 years of service who is injured while on leave in an automobile accident will not be entitled to any retirement benefits for disability. Now, isn't that what you do?

General CARTER. No, sir, that is in line of duty. From the military interpretation, it has always been line of duty, unless—

Mr. BLANDFORD. It has always been until we wrote the Career Compensation Act. But you are on dangerous ground. It has to be related to the activities of the individual in his job. Believe me, that is so. That happens to be suspended, because of an emergency. But it is in the law, and we very definitely made a change in the law in 1949. So "incurred in line of duty" used to be the law, but it isn't any more, although it has been suspended.

General CARTER. I see.

5880

Mr. BLANDFORD. What I am saying is that it seems to me that "incurred in line of duty" could be interpreted, for example, the way it can be interpreted under the Career Compensation Act, that an individual with less than 8 years of service who is injured on leave under the law is not injured as a proximate result of performance of active duty, you see.

Why did the Ways and Means Committee get into this phase of it?

Mr. O'NEILL. The reason they got into it, sir, they found, this is the words of staff in conversation—they found that the absence of these words which are contained in the State provision would grant a disability allowance for individuals regardless of the cause of injury, as you have just pointed out, and they did not feel that this extra tax boon should be available to this limited number of people.

Mr. BLANDFORD. That is a different proposition. They can state that the amount that you receive will not be taxable unless it is incurred in line of duty, but I think it is this committee's decision to decide whether or not the injury will justify disability retirement.

Mr. OSMERS. Mr. Chairman, it seems to me that the words immediately following, "not due to vicious habits, intemperance, or willful misconduct," protects the Government from the type of—I don't think that it is our particular function here to determine the tax liability of the payments.

Mr. BLANDFORD. That is a different proposition.

Mr. OSMERS. It is a different matter.

Mr. RIVERS. I think so too.

Mr. OSMERS. But you, I think, would narrow the benefits tremendously if you said "incurred in line of duty." It would be like somebody driving home from someplace or standing on a sidewalk and somebody drives a car up.

Mr. BATES. You have to determine what that means.

Mr. BLANDFORD. It doesn't belong in this section. I don't think they really intended it to be in this section. I think it ought to be out.

General CARTER. Fine. Let's take it out.

Mr. RIVERS. Is that all right with you?

General CARTER. Yes, sir; fine, sir.

Mr. RIVERS. All right. Get to the next one.

Mr. O'NEILL. Page 10, item (b):

In each case, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade in the Agency. If the Director determines, on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application, the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under

5881

this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered to have been separated within the meaning of section 234 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241(a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions.

Mr. BLANDFORD. What does that mean?

General CARTER. 233 is the voluntary retirement, 50 years, and 20 years of service, if he comes under the criteria established by the Director.

Mr. BLANDFORD. Or severance pay less the amount of annuity?

How does this work, just as an example? A man recovers from a disability, he has been drawing—

Mr. RIVERS. Explain how he has the examinations.

Mr. BLANDFORD. Yes.

Mr. RIVERS. The guidelines the Director should follow.

Now, you get to the point where you see how you restore him.

Mr. BLANDFORD. Yes. What I am getting at is if the man recovers from his disability and he hasn't enough years of service to draw an immediate annuity, I presume he can either accept a deferred annuity or he can get the severance pay if he is a GS-13 or below, or he can get the immediate annuity if he is a GS-14 or above, if he meets the qualifications dealing with GS-14's?

General CARTER. If he is involuntarily selected out. If he recovers from his disability we would anticipate he would return to active duty with the Agency.

Mr. BLANDFORD. Suppose he does not, he has taken a job with an insurance company, started a new career, he has recovered, what does he get?

Mr. ECHOLS. Deferred annuity.

Mr. BLANDFORD. Is that all?

Mr. ECHOLS. Yes.

Mr. BLANDFORD. I thought this implied that he would get what was left of what hadn't been paid to him, or does he get what he has already contributed, refunded to him without regard to the annuity payments? I just want to make sure what he gets.

Mr. RIVERS. That is what that is, isn't it?

Mr. ECHOLS. He would have the option of withdrawing any unexpended balance of his contributions if he left Government service.

Mr. BLANDFORD. In other words, he gets the annuities paid to him, and then he can either accept a deferred annuity or he can withdraw any balance left of what he has contributed to the fund, is that it?

Mr. ECHOLS. That is my understanding.

Mr. BATES. Is he always entitled to a deferred annuity there? He may not be.

Mr. BLANDFORD. If he has over 5 years.

Mr. ECHOLS. Yes.

Mr. RIVERS. If he has the statutory minimum.

Mr. ECHOLS. Or 30 years, if earned.

Mr. BATES. Under these circumstances when it is taken away from him, when the disability allowance is taken away from him, does he then have to go the distance, as far as time is concerned? Five-

5882

year limitation doesn't get into effect then, does it? Doesn't he have to get on the 5 and 20, or the regular provisions? He has recovered, now.

Mr. ECHOLS. He has recovered; yes, sir.

Mr. BATES. Now, unless he has enough time for regular retirement, he doesn't get it. The only thing he would get, he would either get paid back the balance of what he put in, but there is no deferred annuity unless he has the full amount of time for regular retirement.

Mr. BLANDFORD. You only need 5 years to earn a deferred annuity. That is the point. Under this system your annuity vests at age 60; under civil service your annuity vests at age 62.

Now, anybody—for example, if an elevator operator, a kid out here, works for the Government for 5 years and then leaves the Government service, he can leave his contribution in the civil service retirement fund and at age 62 he will get something in the neighborhood of \$32 a month for the rest of his life. That is the way it operates.

Mr. RIVERS. But you have to attain that retirement age.

Mr. BLANDFORD. You have to have 5 years in the system.

Mr. RIVERS. And retain—

Mr. BLANDFORD. And leave the money in the fund.

Mr. RIVERS. And you have to reach the retirement age.

Mr. BLANDFORD. Age 62 in civil service or 60 under this provision.

Mr. RIVERS. All right. That is the interpretation.

Mr. OSMERS. Sixty or fifty?

Mr. BLANDFORD. It is 60 here for the deferred annuity. The only other case—and this is the reason I brought it up—is that supposing—

Mr. BLANDFORD. GS-14 and above, who elects not to go back to work, having been retired for disability, he elects not to go back to work, would he then qualify for the immediate annuity because he is a GS-14?

General CARTER. No, he would not.

Mr. BLANDFORD. What I am getting at is the Director says "You are recovered, you are a GS-15, we love to have you back in the Agency."

He says, "No thanks, I have another job, I am happy now, I have been out for 5 years, I am well established in business."

Then, as I understand it, this section would not permit—the section dealing with GS-14 would not permit that individual who could have drawn an immediate annuity because he had 5 or more years of service, this section would not permit him to draw an immediate annuity based upon his 2 percent for each year of service?

Mr. ECHOLS. No, sir.

Mr. BLANDFORD. Is that correct?

Mr. ECHOLS. Only if he were age 50, and had 20 years.

Mr. BLANDFORD. No, wait a minute, let's get this clear.

Mr. WOODYEAR. Only if he were eligible for voluntary retirement with 20 years of service.

Mr. BLANDFORD. You have to be 50 years of age and have 20 years of service in order to draw an immediate annuity.

Mr. WOODYEAR. Yes.

Mr. BLANDFORD. He would not qualify under the latter provision in here which says if you are a GS-14 and above, you can draw an

5883

immediate annuity based upon 2 percent for each year of service completed. He does not qualify for that provision, is that correct?

General CARTER. That is only for involuntary separation.

Mr. BLANDFORD. I want to make sure that this does not apply.

General CARTER. This would only apply to involuntary separation.

Mr. HARDY. If he can arrange to be let out he would be in good shape, wouldn't he?

Mr. RIVERS. You couldn't—we aren't going to put that kind of dishonesty in the—

Mr. HARDY. That is not necessarily dishonest at all.

Mr. WOODYEAR. May I make a suggestion for a minor amendment to page 10, top of the page, line 15. We have run into trouble with the physical examination, since people are retired for disability on mental—for mental reasons. And if we had "medical examination" there, which we are now seeking, it is much easier to live with than "physical."

Mr. HARDY. That might be a good idea.

Mr. RIVERS. Yes.

Mr. OSMERS. Yes.

Mr. RIVERS. You have had a lot of experiences that these people have.

Mr. BLANDFORD. Strike out the word "physical" and substitute "medical."

Mr. WOODYEAR. Substitute "medical."

Mr. HUDDLESTON. Good idea.

Mr. RIVERS. I think that is a good idea.

Mr. OSMERS. That should apply to Congressmen, too, Mr. Chairman.

Mr. RIVERS. Well, now, where are we?

General CARTER. We are still on paragraph C, sir, which is line 20 on page 11.

Mr. HARDY. I thought we got down to page 12.

General CARTER. And in the case of a recovered disability annuitant who is not reinstated in the Agency, he will be considered to have been separated within the meaning of article 234, which is the discontinued service retirement as of the date he was retired for disability. And after the discontinuance of a disability annuity he will be entitled to the benefits of that section 234 or of section 241. He can elect voluntary retirement if he is eligible under the terms of section 233.

Mr. RIVERS. Yes.

Mr. HARDY. But if he comes back to duty, wouldn't he be eligible to come back to duty?

General CARTER. Yes, sir.

Mr. HARDY. All right. If he comes back to duty, then he puts himself in the position of being eligible for selection out, if there should be some little thing he couldn't perform, so he would be sort of silly, wouldn't he, to drop out immediately and take a deferred annuity?

Mr. RIVERS. I would say that is a calculated risk.

General CARTER. It would be the individual's choice, in the discretion of the Director.

Mr. RIVERS. That would be a calculated risk.

Mr. HARDY. Yes, but he has recovered, he has more than 5 years, he is in grade 14 or above and he comes back on duty, not knowing

5884

whether he is going to be selected out right quick or not, but if he gets back on there and proves that he is not really needed, he could or might be able to do that.

General CARTER. If he is a GS-14 or above, he could be retired involuntarily and he would get 2 percent per year of his pay, which amounts to an annuity of about 10 percent, sir.

Mr. RIVERS. He would get 10 percent.

General CARTER. Ten percent under the 5-year insertion which we have put in here.

Mr. HARDY. If it were to his advantage to take an immediate retirement we could be pretty doggoned sure he would come back on duty and would find a way eventually to get selected out.

General CARTER. Well, this, again, is at the discretion of the Director, and I am sure when we find people in the Agency who are creating means for getting selected out—

Mr. HARDY. That might be a little hard to do.

General CARTER. Not with the statutory authority of the Director, sir. He, fortunately, under the National Security Act of 1947, as amended, can terminate people in his discretion.

Mr. HARDY. You can keep him working and keep on paying him his full salary in spite of the fact that he is not delivering? You are not going to do anything of the kind.

General CARTER. We don't do it that way.

Mr. HARDY. Of course you are not.

Mr. HOUSTON. We do not do that, sir.

Mr. RIVERS. You may decide not to rehire him.

Mr. HARDY. Anyway, let's get down to the other section.

Mr. RIVERS. Let's go. We have a tendency to be—where are we now?

Mr. BATES. We finished that paragraph here, I guess.

Mr. RIVERS. We had (d) on page 12.

Mr. HARDY. Right.

Mr. BATES. If he doesn't come back he loses the time for credit for retirement purposes as of the date he did retire for the disability.

General CARTER. If he does not come back.

Mr. BATES. If he does come back, how about time then?

Mr. BLANDFORD. It doesn't count.

General CARTER. Start picking it up.

Mr. BLANDFORD. The time on the retired list does not count as active duty for purposes of retirement at some future date; am I correct?

Mr. O'NEILL. Yes, sir.

General CARTER. Yes, sir.

Mr. RIVERS. I wouldn't think it would.

Mr. BLANDFORD. It can be interpreted that way for military retirement, that is the reason I think Mr. Bates asked the question.

Mr. BATES. Yes.

Mr. HARDY. But he would be eligible for promotion to a higher grade.

Mr. BLANDFORD. Yes, that time counts.

Mr. RIVERS. He might be a very valuable man. That is the reason for that.

Mr. HUDDLESTON. May I ask just one question at that point, Mr. Chairman?

5885

General, I notice that this recovered disability employee can be hired back or reinstated at the same level or at a higher level, but there is no reference to reinstating him at a lower level. Why is that left out?

General CARTER. I don't know why it was left out, except we would not expect to bring back a disability retiree at a lower level.

Mr. HUDDLESTON. Well, it might be a man that, say, lost his leg, and as a result of that loss of a limb he wouldn't be able to perform his old job, but still he might have some qualities that are needed in the Agency and you might bring him back at a reduced level.

Mr. HARDY. He would be eligible for more than, George.

Mr. HUDDLESTON. This would be precluded.

Mr. HARDY. He would have more authority and responsibility.

General CARTER. I think it would be an administrative determination, sir.

Mr. BENNETT. I don't believe you can settle all these things by statute.

Mr. RIVERS. I don't think so. You have got to trust somebody.

Mr. HUDDLESTON. But the fact that they mentioned reinstating him at a higher and the same levels, and don't say anything about the lower level, would seem to preclude the possibility.

Mr. BLANDFORD. I think it is basically for the protection of the individual.

General CARTER. Of the individual.

Mr. RIVERS. I think so.

Mr. BLANDFORD. Yes; it is guidance for the Director that assures the man that he will not come back at a lesser rate than when he retired.

Mr. RIVERS. Isn't that right, Mr. Woodyear?

Mr. WOODYEAR. In 1958 we had no provision for bringing them back on a mandatory basis, you could declare a man to be recovered, deny him his annuity, not offer him a job. So in the interest of protecting him we employed mandatory reinstatement and assumed that he would not offer him less than he had been paid at the time of retirement for disability.

Mr. HARDY. You don't have to find him physically able to come back, though?

Mr. WOODYEAR. It is presupposed if he is reemployable and recovered from his total disability, which means total disability insofar as Foreign Service around the world is concerned, that he is able to come back.

Mr. RIVERS. Now section (d), on page 12.

Mr. O'NEILL (reading):

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself under the Federal Employees' Compensation Act of September 7, 1916, as amended, covering the same period of time. This provision shall not bar the right of any claimant to the greater benefits conferred by either Act for any part of the same period of time. Neither this provision nor any provision of the said Act of September 7, 1916, as amended, shall be so construed as to deny the right of any person to receive an annuity under this Act by reason of his own services and to receive concurrently any payment under such Act of September 7, 1961, as amended, by reason of the death of any other person.

Mr. BLANDFORD. That is a husband and wife combination, where the husband died, wife drawing FEC compensation, and she also may be retired for disability.

5886

Mr. O'NEILL. It could be, sir. [Reading:]

(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 14 of the Federal Employees' Compensation Act of September 7, 1916, as amended, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal employees' compensation fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such computed payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such department for reimbursement to such fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

This total section makes provision for retirement of employees who become disabled or incapacitated for duty. It establishes procedures for physical examinations and subsequent return to duty when an annuitant has recovered to the extent that he can return to duty.

The section further bars payment of a disability annuity if the employee is given an award of compensation for the same disability under the Federal Employee's Compensation Act.

"Death in service," section 232.

Mr. RIVERS. I think this would be a good place to——

Mr. BLANDFORD. You left out (f).

Mr. O'NEILL. Going back now to line 14——

Mr. BLANDFORD. This is the Ways and Means Committee language.

How is the Ways and Means Committee going to handle this; have they told you?

Mr. O'NEILL. It is not determined at the moment. They are going to go to full committee hearing, but the date or time has not been set. I believe it is subject to some discussion possibly with Chairman Rivers, but they were unable to set a time for us last night.

Mr. BLANDFORD. This is to make the disability annuity not subject to taxes.

Mr. RIVERS. Yes.

Mr. O'NEILL. So I would like to insert on page 14, line 20——

Mr. BLANDFORD. You and I are using different copies.

Mr. O'NEILL. Yes; a different reference here. This would be the new top of page 14. It is here and I have not read it yet. [Reading:]

(f) Paragraph (4) of section 104(a) of the Internal Revenue Code of 1954 (26 U.S.C. 104(a)(4)) (relating to the exclusion from gross income of compensation for injuries and sickness) is hereby amended to read as follows:

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021), or as a disability annuity payable under section 231 of the Central Intelligence Agency Retirement Act of 1963."

General CARTER. Mr. Chairman—pardon me.

Mr. OSMERS. Go ahead.

5887

General CARTER. There are only about three additions to the bill which were made yesterday, last night, as a result of discussions here in the committee.

One is on page 17, an important one; one is on page 18, also an important one, addressing itself to the 5-year provisions which have been discussed by the subcommittee.

All of the other provisions of the bill are as originally submitted, and in conformance with prior legislation.

Mr. OSMERS. Basically, Mr. Chairman, what is the problem? Now, the subcommittee has gone over this.

Mr. RIVERS. The 5 years is the main one.

Mr. HARDY. That is the one I have questions on.

Mr. HUDDLESTON. Why don't we turn to that now?

Mr. RIVERS. Let's see if we can resolve it.

Mr. BLANDFORD. Section 233, on page 17, I think, is one of the important provisions added here to satisfy the subcommittee. That reads:

SEC. 233. Any participant in the system who is at least fifty years of age and has rendered twenty years of service, including service within the meaning of section 253, may, on his own application and with the consent of the Director, be retired from the Agency and receive benefits in accordance with the provisions of section 221—

then we added this language, and that is what Mr. Osmers suggested yesterday:

provided he has not less than 5 years' service with the Agency.

This is to preclude a man from the Department of Agriculture moving in and serving for a year. If this is acceptable to the subcommittee, this is what we spent 1 whole day on.

Mr. RIVERS. We spent more than 1 whole day.

Mr. HARDY. Yes.

Mr. RIVERS. Mr. Hardy, you were worried about that.

Mr. HARDY. Yes, it is all right.

Mr. OSMERS. Fine change.

Mr. RIVERS. Well, without objection we will accept that.

Mr. BLANDFORD. Section 234; if you will turn to page 18, subsection (c) reads:

The Director may, in his discretion, retire participants in grade GS-14 and above to promote the efficiency of the Agency.

This was the attrition-out for the GS-14's and above.

It so retired, they shall receive retirement benefits in accordance with the provisions of section 221, provided they have, in each case, not less than 5 years' service with the Agency.

Mr. RIVERS. Mr. Hardy is worried about swapping from one to the other. Mr. Hardy, let's hear from you.

Mr. HARDY. That is an improvement, but I am not sure that it meets the total objections that I had.

Mr. BLANDFORD. This does not solve one of Mr. Hardy's problems, unfortunately, this language. Because this language still would permit a man to serve for 1 year in foreign intelligence activities provided he had been 5 years with the Agency.

5888

I think what the subcommittee was talking about yesterday is that we wanted an individual who was going to get the benefit of this immediate annuity to have participated in the type of operation that qualified him for this retirement program. In other words, the 5 years in the Agency doesn't satisfy. It is 5 years in the Agency in the covered type of retirement. Isn't that what you had in mind, Mr. Hardy?

Mr. BATES. Right.

Mr. HARDY. Yes, that is part of it.

This permits an immediate annuity, regardless of age, and that is what this does, doesn't it?

Mr. BLANDFORD. Yes, sir.

General CARTER. Sorry, didn't hear that.

Mr. HARDY. Permit an immediate annuity regardless of age, where there may have been a total of only 5 years of Federal service, that is what could happen in this thing, and I just don't think—of course, as you point out, if he only has 5 years, it will only be 10 percent. It might run as high as 15 years of Federal service, and he might retire at age—he could at age 35 with 15 years Federal service, and he would be getting a pretty good annuity. That is, to me—I think it ought to have some age factor in there. I don't think he ought to get an immediate annuity unless he has attained some age. You might tie it to, if he has 15 years of service in this situation, why, I wouldn't fuss about retirement at age 50. But to take one of these people and put him in this kind of a job, keeping him in there for only 5 years, retire him on immediate annuity at a very young age, I just don't think it is right.

Mr. RIVERS. This isn't what the general told us on the first day or so of the hearing. He said that in all cases where you would have a specialized man whom you sought from public life, he would be much older than this.

Mr. HARDY. But not necessarily. If he does, then it wouldn't hurt anything to put an age limit in there.

Mr. RIVERS. I wouldn't think so, either.

General CARTER. There is no objection to putting an age limit in there. It would not inhibit our activities. I can't conceive of anyone being under, let's say, 40 years of age and coming within the criteria established here.

Mr. RIVERS. I wouldn't either.

Mr. HARDY. Right.

General CARTER. Just last year I released, from the Agency, 37 people who were in grades 14 and 15; not a single one of them was under 40 years of age.

Mr. HARDY. If that is the case, then 40 years wouldn't hurt you any. As a matter of fact, I would think that 40 years is too low an age to permit immediate retirement for any service ranging from 5 up to 19 years.

Mr. OSMERS. Mr. Chairman, would adding the requirement, "having attained the age 40," to the language, would that satisfy?

Mr. RIVERS. Not less than 40.

Mr. OSMERS. Not less than 40. Would that satisfy you?

Mr. HARDY. That would help, but I still say that is a little on the young side. Because here is a fellow, suppose he had a total of 19, if he has 20 years he can go out at age 50 anyhow, but he could get a

total of 20 years military and Government service and come out at age 40.

Mr. RIVERS. He can do that now as an enlisted man.

Mr. HARDY. As an enlisted man.

Mr. BLANDFORD. Why can't we solve this out by striking out 5 years and putting in 10 years, which will come close to the general's estimate as to about the earliest age this would apply to?

In other words, these people, in order to get to be GS-14's, would have to have almost a minimum of 10 years of service, wouldn't they?

General CARTER. Minimum of 10 or 15 years of service at the earliest; yes, sir.

Mr. BLANDFORD. Why not strike out 5 and put in 10 years, and leave it 10 years' service in the Agency; at least that give you—

Mr. HARDY. That would help it.

General CARTER. There are two problems that arise here, sir. This is an involuntary retirement; it is a selection-out at the discretion of the Director. It requires at least 5 years of service and it requires service of the type which makes him eligible for this retirement in the first place.

Mr. HARDY. I don't object to you selecting him out, I think you need to do that, but I do question the desirability or the propriety of having an annuity begin immediately at such a young age. You could give him a deferred annuity which he could pick up at age 40 or 50, regardless of his age, which I wouldn't object to, but to permit him to come out and take an immediate annuity regardless of his age, I just don't think it is good business.

Even if Foreign Service does have it, I don't think they ought to have it.

Mr. OSMERS. I want to go back again to what I mentioned before about carrying out the mission of the Agency.

Now, you may recall I said a few minutes ago I didn't want the Director burdened down with a lot of personnel decisions. And here again I think it is fair to ask General Carter whether changes in this language along the lines that have been suggested here, whether that will be a hindrance to a Director of CIA from time to time in carrying out his missions.

General CARTER. No, sir. The utilization of the term "Director" in the legislation I do not think would be—

Mr. OSMERS. I don't mean the term "Director." But I mean if we limit—as the committee seems to want to do—if we limit your authority to discharge people from the Agency or make it very undesirable from the standpoint of the employee discharged, do we prevent the Agency from performing its maximum duty?

General CARTER. Well, it is an additional inhibition, sir. I don't think it is a truly serious one. We have regulations in the Agency now that we would not normally take personnel on for a period of time as low as 5 years, if we could anticipate this, as a staff employee. We would hire them as a reserve officer or a contract employee.

So the 5 years is not a difficult limitation to live with. If it were extended, however, to 10 years, I do feel that it would inhibit the Director's authority to bring someone in, find out after 7 years, perhaps, that his skill was no longer required, that he was there in the Agency, we couldn't use him, it was time to involuntarily select him out; we would do this then and he would receive an annuity after 7 years, of

5890

14 percent of his high 5 salary. It is enough to get him reoriented; it is certainly not enough to give him any livelihood.

Mr. HARDY. Yes, but he might have had military service, he might have had some other Government service. Let me take one other tack and see if that is what it is. Now, on line 3, "if so retired, they shall, upon attaining age 50, receive retirement benefits in accordance with the provisions," and so forth.

That is right. As I understand it, you wouldn't have hardly any that you would select out before they were age 50, anyway. Did I understand you correctly?

Mr. OSMERS. Would you make that age 40, Mr. Hardy?

Mr. HARDY. No.

Mr. OSMERS. In view of the realistic experience which the Director has.

Mr. HARDY. He tells us that he would hardly have anybody that would attain grade 14 under age 50. Isn't that what you said?

General CARTER. Under age 40, sir. Very few would be GS-14's or higher under age 40.

Mr. HARDY. I would compromise to age 45, if I had to. I think 50 is young enough.

General CARTER. For GS-14.

Mr. HARDY. To be retired, to be retired.

General CARTER. Well, this would mean, then, sir, that if we had a GS-14 who was no longer of any use to us—

Mr. HARDY. You could retire him, but his annuity would be deferred until he attained that age.

Mr. RIVERS. It would be deferred until he gets to this age he is talking about.

General CARTER. Now, we are introducing a new facet of it.

Mr. HARDY. It did that deliberately.

Mr. RIVERS. He has.

Mr. HARDY. That is why I did that.

Mr. RIVERS. It might be good to put 45 in there.

Mr. HARDY. You can retire him at any time, but his annuity doesn't begin until he attains age 45.

General CARTER. Then we should have something to carry him along for the 3 or 4 years it is going to perhaps take him to get reoriented. This is a very small amount of money that we are talking about, which will, I hope, help him to get readjusted. He has put in 7 years, let's say, of the most critical type of work which he has to have in order to be justified for this program.

Mr. HARDY. I asked yesterday for a breakdown on these people that you selected out last year.

General CARTER. I have that right here, sir.

Mr. HARDY. And I think that might shed a little light on it.

General CARTER. We identified as potentially surplus over the past 2 years 191 people within the Agency. After review by me we retained 12 in their same career service. We were able to reassign to other tasks in the Agency 44, which left 125, which were to be separated from the Agency. Of these we were able to get 26 reemployed in other Government agencies, 20 in private industry and teaching, and the remaining 64 left the Agency, they did not need our employment help, and I do not have the statistics on how they have been reemployed.

5891

Mr. HARDY. I was interested in the ages of the people.

General CARTER. All right, sir. There were 37 in grades GS-14 and 15; 9 of these were 60 years of age or over; 19 were between 50 and 59; 9 were between 40 and 49; there was none under age 40. This is grades 14 and 15.

Of the 88 in grades 13 and below, 10 were 60 or over; 19 were between 50 and 59; 39 were between 40 and 49; 20 were between 30 and 40.

Mr. HARDY. We are only concerned in this point with those grades 14 and 15.

General CARTER. Yes, sir.

Mr. HARDY. Now, you had 64 that left the Agency.

General CARTER. Under this selection-out procedure, which it was, there were a total of 125 separated from the Agency as surplus.

Mr. HARDY. 125?

General CARTER. Yes, sir.

Mr. RIVERS. But under GS-14—

General CARTER. Of those 125, 37 were GS-14's and 15's.

Mr. BLANDFORD. Did any of your GS-14's have less than 10 years' service with the Agency?

General CARTER. Three had less than 10 years of service.

Mr. HARDY. There would be only nine of those that were separated that would be affected by putting a 50-year limitation on here. Now, you didn't have a breakdown at age 45.

Mr. RIVERS. 37 between 40 and 49.

Mr. HARDY. No. You had nine.

General CARTER. We had nine between 40 and 49.

Mr. RIVERS. That is right.

Mr. HARDY. Now, you don't have their ages there, do you, and their length of service?

Mr. BLANDFORD. I think the GS-14's, I still think you are on safe ground if you use 10 years of service rather than put in an age under 50, because if you put in under age 50 in this bill it is going to stand out.

Mr. HARDY. You have got no age.

Mr. BLANDFORD. I know that. But if you put 40 everybody is going to assume that 40 is the age.

Mr. RIVERS. Yes.

Mr. BLANDFORD. That is the trouble with 40.

Mr. RIVERS. This GS-14 has passed 40.

Mr. OSMEERS. Mr. Chairman, for purposes of clarification, where we refer here to not less than 5 years of service in the Agency, on line 5, are we referring to 5 years of qualifying service?

Mr. BLANDFORD. No, that is the trouble. This language, and I think it has to be modified, you could either have 10 years of service with the Agency or a minimum of 5 years of qualifying service. I suggested 5 years of qualifying service because I can certainly visualize many situations arising, not many but some situations arising in which a person is being used for a specific purpose as a GS-14 or above, and his usefulness may come to an end. I can see that happening in this business.

I think we have got to remember that we are trying to write a bill here for a very particular group of people. This is not ordinary employment. These are types of people who may have techniques

5892

or skills where they burn out very quickly, or where their usefulness for many reasons might come to an end for reasons we cannot even think of now. But I think in order to qualify a person for this immediate annuity, which isn't a great deal of money, we ought to at least require a minimum of 5 years of service in this type of operation.

Mr. HARDY. He is not likely to be a GS-14.

Mr. BLANDFORD. Yes, he could be.

Mr. OSMERS. Isn't it possible, Mr. Chairman, to define that service here?

Mr. BLANDFORD. I think we could say 5 years of service.

Mr. HOUSTON. Five years of qualifying service.

Mr. BLANDFORD. Not less than 5 years of qualifying service, I would be perfectly content with that language.

Mr. RIVERS. And a category the Director has defined as critical or whatever word you want to attach to it.

Mr. OSMERS. Mr. Chairman, the one error that I think some of us are inclined to make is that we are comparing the men who would be prematurely retired under this law with clerk-typists, with GS-9's, management assistants, and so on. A man becomes completely removed, often from American life, and has to start all over again. And I want to lean in the way of giving the Director the ability to let him go when he wants to let him go when he has ceased his usefulness, and also to give the man some immediate income, if we can.

Mr. BLANDFORD. I think if we use the words "not less than 5 years of qualifying service," that we will solve it.

Mr. RIVERS. How does that sound?

General CARTER. That is fine, sir.

Mr. HARDY. I am still not sure that you need this. I want to give them all reasonable assistance in getting qualified people, but I still cannot see how you are going to have very many people that are going to be adversely affected if you had a deferred annuity here until they attained age 50. Now, actually, you only had 9 people that were affected in this bunch that you separated out, out of a total of 189 that were surplus.

Mr. BLANDFORD. Can I just be the devil's advocate here for a moment?

Mr. HARDY. I am the devil's advocate.

Mr. BLANDFORD. Let me give you an illustration, what you would really then do, you would compel the CIA to keep this man employed until he was age 50 even though he was not useful to the Agency. It would cost you \$16,000 a year to keep this man on active duty as opposed to \$1,800 for retirement. That is what you would be doing.

Mr. HELMS. May I give you an actual case of an individual who is a GS-14 today, and he is aged 39. He has had 12 years of covered service with the Agency in various parts of the world. He has had 19½ years of Federal service, which includes his wartime service, and so on. If we desired to retire this man now, with 12 years of covered service, 39 years old, and all the other factors, then he would have to wait this additional amount of time before he would qualify if we put an actual age factor in here, when in point of fact it seems to me he has met every criteria.

Mr. RIVERS. And he is burned out.

Mr. HARDY. Not necessarily.

5893

If you put a total of 10 years in the age and 5 years of covered service, I will go along with it. I think we can live with that.

Mr. HUDDLESTON. I second that.

Mr. BLANDFORD. Then how about this, provided they have in each case not less than 5 years of qualifying service with the Agency and 10 years of total service.

Mr. HUDDLESTON. Total service.

Mr. RIVERS. Total service. How does that sound? That would take 99 percent of the cases.

General CARTER. It will take care of the cases that we separated last year, sir. It seems to me that—

Mr. BLANDFORD. But this isn't retroactive, General.

General CARTER. No.

Mr. BLANDFORD. Granted there may be one or two cases where you are going to have to keep them on the payroll another year in order for them to qualify, that is what you are being forced to do.

Mr. RIVERS. We have explored that area.

General CARTER. If you keep another man on the payroll at grade GS-14 or GS-15 for a year, this is approximately 10 years of a deferred annuity, of an annuity, rather, at the going rate of 5 years' service.

Mr. RIVERS. You have to have some cut off.

General CARTER. And then you are giving him an annuity.

Mr. BLANDFORD. That is right, an annuity based upon service which he has rendered.

General CARTER. And carry him on.

Mr. RIVERS. When you put these cutoff periods, these qualifications, you always run into something like that.

General CARTER. Yes, sir; and you are taking away from the Director, I think, the discretion which is written into the act to require him—

Mr. HARDY. I am willing to give the Director a whole lot of discretion, but I am not willing to give all the discretion being exercised in the executive branch today. I am not talking about your Agency. I think the executive branch is going crazy. We have a lot of discretion being exercised over there by people not as competent as you are in your job. I think the Congress has to retain some jurisdiction.

Mr. BLANDFORD. Is it the pleasure of the committee to approve this?

Mr. RIVERS. Have we agreed on that provision?

Mr. BLANDFORD. Let me read it.

Provided they have in each case not less than 5 years of qualifying service with the Agency and 10 years of total service.

Mr. HUDDLESTON. That needs to be 10 years of total service with the Agency. It needs to be spelled out.

Mr. BLANDFORD. I think we will have to rephrase this a little bit. What we are talking about is 5 years of qualifying service, and 10 years of service with the Agency. That is what we are talking about.

Mr. OSMERS. Mr. Chairman, I would certainly not make an issue out of it on the floor at all, I don't believe, but I am opposed to putting in the 10 years of service with the Agency because we place a limitation on the Director. We are not talking about any money, we are not talking—if I may say so, I don't feel we are talking about executive depart-

5894

ment discretion at all. I think what we are doing is hobbling, we are hobbling an important official who has a very unusual responsibility by placing numbers that have no financial meaning at all to the Government.

Mr. BLANDFORD. We obviously cannot finish this.

Mr. RIVERS. I don't think we had better try to finish it now because we haven't got this thing ironed out. We will try to find out a time we can meet and let you know.

General CARTER. Mr. Chairman, we are prepared to stay here at your wish; as you know we are most anxious to get this legislation on the floor of the House.

Mr. RIVERS. Why don't we recess, and we will try to figure out a time we can meet with you, and maybe we can meet earlier than we thought, General.

In the meantime we can see what we have.

(Whereupon, at 12:20 p.m., the subcommittee adjourned.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,

Washington, D.C., Wednesday, September 11, 1963.

The subcommittee met in executive session at 10:43 a.m., Hon. L. Mendel Rivers, chairman of the subcommittee, presiding.

Mr. RIVERS. General Carter, we welcome you back after a brief respite.

I knew when we stopped that this holiday would catch us.

General CARTER. Yes, sir.

Mr. RIVERS. The subcommittee certainly wants to dispose of this matter as quickly as we can. That is what we are meeting for this morning.

Mr. BLANDFORD. Mr. Chairman, may I suggest that General Carter at this point go through the bill from the very beginning and show the changes that have been made as the result of the subcommittee's prior actions, and then when we get to the section where we stopped we can resume the explanation of what the bill does.

You will recall that we had several reservations about certain features of it?

Mr. RIVERS. What was the date of our last meeting, Mr. Blandford?

Mr. BLANDFORD. It was July 25.

Mr. RIVERS. Why don't we follow that course here?

I believe it would be more orderly for the record.

General CARTER. Yes, sir; we would be very happy, Mr. Chairman and members of the subcommittee, to continue the discussion of this bill which of course we regard as most important. I have with me today Mr. John Warner, our legislative counsel.

Mr. RIVERS. Glad to have you back. We missed you before.

General CARTER. Mr. Emmett D. Echols, our Director of Personnel, Mr. Larry Houston, our General Counsel, and Mr. William Woodyear, who is a legislative assistant to the Director of Personnel at the Department of State, who has been with us in our other hearings.

Mr. RIVERS. He is very helpful to us.

5895

STATEMENT OF GEN. MARSHALL S. CARTER, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE; ACCOMPANIED BY LAWRENCE R. HOUSTON, GENERAL COUNSEL; JOHN S. WARNER, LEGISLATIVE COUNSEL; EMMETT D. ECHOLS, DIRECTOR OF PERSONNEL; JOSEPH G. O'NEILL, JR., ASSISTANT LEGISLATIVE COUNSEL; MISS BERTHA H. BOND, EXECUTIVE ASSISTANT TO DIRECTOR OF PERSONNEL; PETER J. CONNELL, OFFICE OF LEGISLATIVE COUNSEL; AND WILLIAM WOODYEAR, LEGISLATIVE ASSISTANT TO DIRECTOR OF PERSONNEL, DEPARTMENT OF STATE

General CARTER. Sir, in the books before you, at tab I under the marker "revised bill" there is a clean draft of the bill that we were working on in August. Included in this clean draft are the various amendments on which the subcommittee had expressed its will.

Now if it suits the will of the subcommittee I would propose that Mr. Warner, our legislative counsel, run through the bill, pointing out the amendments and these amendments are italicized or are bracketed in black brackets.

Thereafter we would propose to continue with a reading and review of the bill beginning at section 235 which is where we had discontinued in July.

Mr. RIVERS. All right, sir; let's go ahead.
(The documents are as follows:)

[H.R. 7216, 88th Cong., 1st sess.]

A BILL To provide for the establishment and maintenance of a Central Intelligence Agency Retirement and Disability System for a limited number of employees and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND DEFINITIONS

PART A—SHORT TITLE

SEC. 101. *Titles I to III inclusive of this Act may be cited as the "Central Intelligence Agency Retirement Act of 1963".*

PART B—DEFINITIONS

SEC. 111. When used in this Act, the term—

- (1) "Agency" means the Central Intelligence Agency; and
- (2) "Director" means the Director of Central Intelligence *or the Deputy Director of Central Intelligence.*

TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART A—ESTABLISHMENT OF SYSTEM

RULES AND REGULATIONS

SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency retirement and Disability system *for a limited number of employees*, referred to hereafter as the system.

(b) The Director shall administer the system in accordance with such rules and regulations and with the principles established by this Act.

5896

[(c) In the interests of the security of the foreign intelligence activities of the United States and in order to further implement the proviso of section 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C. 403(d)(3)), that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and notwithstanding the provisions of the Administrative Procedure Act (5 U.S.C. 1001 et. seq.) or any other provisions of law, any determinations by the Director authorized by the provisions of this title shall be deemed to be final and conclusive and not subject to review by any court.]

ESTABLISHMENT AND MAINTENANCE OF FUND

SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency retirement and disability fund which shall be maintained by the Director. The Central Intelligence Agency retirement and disability fund is referred to hereafter in this title as the fund.

PARTICIPANTS

SEC. 203. The Director may designate from time to time such Agency officers and employees, hereafter referred to as participants, who shall be entitled to the benefits of the system. *Any participant who has completed fifteen years of service with the Agency and whose career at that time is adjudged by the Director to be qualifying for the system may elect to remain a participant of such system for the duration of his employment by the Agency.*

ANNUITANTS

SEC. 204. (a) Annuitants shall be participants who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, dependent widowers, children, and beneficiaries of participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this title the term—

(1) "Widow" means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or *who* is the mother of issue by such marriage.

(2) "Dependent widower" means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or *who* is the father of issue by such marriage, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

(3) "Child" means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before age eighteen, is incapable of self-support. In addition to the offspring of the participant and his or her spouse, the term includes (i) an adopted child, and (ii) a stepchild or recognized natural child who received more than one-half of his support from the participant.

PART B—COMPULSORY CONTRIBUTIONS

SEC. 211. (a) Six and one-half per centum of the basic salary received by each participant shall be contributed to the fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Agency to the credit of the fund.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

5897

PART C—COMPUTATION OF ANNUITIES

SEC. 221. (a) The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest five consecutive years of service, for which full contributions have been made to the fund, multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 251 and 252. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted.

(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband, commencing on the date following such participant's death and terminating upon the death of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2½ per centum of any amount up to \$2,400 he specified as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) 40 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$600; or (iii) \$1,800 divided by the number of children.

(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) 50 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$720; or (iii) \$2,160 divided by the number of children.

(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant.

(e) The annuity payable to a child under paragraph (c) or (d) of this section shall begin on the first day of the next month after the participant dies and such annuity or any right thereto shall be terminated upon death, marriage, or attainment of the age of eighteen years, except that, if a child is incapable of self-support by reasons of mental or physical disability, the annuity shall be terminated only when such child dies, marries, or recovers from such disability.

[(f) Any unmarried participant retiring under the provisions of this Act and found by the Director to be in good health may at the time of retirement elect a reduced annuity, in lieu of the annuity as hereinbefore provided, and designate in writing a person having an insurable interest (as that term is used in 5 U.S.C. 2259(h)) in the participant to receive an annuity after the participant's death. The annuity payable to the participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section, and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the participant, but such total reduction shall not exceed 40 per centum. The annuity of a survivor designated under this paragraph shall be 50 per centum of the reduced annuity computed as prescribed above. The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.]

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

RETIREMENT FOR DISABILITY OR INCAPACITY—MEDICAL EXAMINATION—RECOVERY

SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a)(2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful

5898

misconduct on his part, shall, upon his own application or upon order of the Director, be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his grade in the Agency.

(b) In each case, the participant shall be given a *medical* examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade in the Agency. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered to have been separated within the meaning of paragraphs (a) and (b) of section 234 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241(a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself under the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et seq.), covering the same period of time. This provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period of time. Neither this provision nor any provision of the said Act of September 7, 1916, as amended, shall be so construed as to deny the right of any participant to receive an annuity under this Act by reason of his own services and to receive concurrently any payment under such Act of September 7, 1916, as amended, by reason of the death of any other person.

(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 14 of the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 764), except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal employees' compensation fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in

5899

such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

DEATH IN SERVICE

SEC. 232. (a) In case a participant dies and no claim for annuity is payable under the provisions of this Act, his contributions to the fund, with interest at the rates prescribed in sections 241(a) and 281(a), shall be paid in the order of precedence shown in section 241(b).

(b) If a participant, who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a widow or a dependent widower, as defined in section 204, such widow or dependent widower shall be entitled to an annuity equal to 50 per centum of the annuity computed in accordance with the provisions of paragraph (e) of this section and of section 221(a). The annuity of such widow or dependent widower shall commence on the date following death of the participant and shall terminate upon death of the widow or dependent widower, or upon the dependent widower's becoming capable of self-support.

(c) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(1). The child's annuity shall begin and be terminated in accordance with the provisions of section 221(e). Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though such wife or husband or child had not survived the participant.

(d) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 22(c)(2). The child's annuity shall begin and terminate in accordance with the provisions of section 221(e). Upon termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though that child had never been entitled to the benefit.

(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the system, the annuities payable in accordance with paragraph (b) of this section shall be computed in accordance with the provisions of section 221 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this provision shall in no case exceed the difference between his or her age on the date of death and the mandatory retirement age applicable to his or her grade in the Agency. In all cases arising under paragraphs (b), (c), (d), or (e) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of his death.

VOLUNTARY RETIREMENT

SEC. 233. Any participant in the system who is at least fifty years of age and has rendered twenty years of service may on his own application and with the consent of the Director be retired from the Agency and receive benefits in accordance with the provisions of section 221 *provided he has not less than five years of service with the Agency.*

DISCONTINUED SERVICE RETIREMENT

SEC. 234. (a) Any participant who separates from the Agency after obtaining at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), may, upon separation from the Agency or at any time prior to becoming eligible for an annuity, elect to have his contributions to the

5900

fund returned to him in accordance with the provisions of section 241, or (except in cases where the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States) to leave his contributions in the fund and receive an annuity, computed as prescribed in section 221, commencing at the age of sixty years.

(b) If a participant who has qualified in accordance with the provisions of paragraph (a) of this section to receive a deferred annuity commencing at the age of sixty dies before reaching the age of sixty his contributions to the fund, with interest, shall be paid in accordance with the provisions of sections 241 and 281.

(c) The Director may in his discretion retire participants in grade GS-14 and above to promote the efficiency of the Agency. If so retired they shall receive retirement benefits in accordance with the provisions of section 221, *provided they have in each case not less than five years of qualifying and a total of ten years of service with the Agency. Any individual so retired who does not meet these service requirements shall receive the benefits provided for individuals in grade GS-13 as set out in paragraph (d) of this section.*

(d) The Director may in his discretion retire participants in grade GS-13 and below to promote the efficiency of the Agency and each such participant shall receive—

(1) one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then current salary rate, payable without interest, from the fund, in three equal installments on the first day of January following the participant's retirement and on the two anniversaries of this date immediately following: *Provided, That in special cases, the Director may in his discretion accelerate or combine the installments; and*

(2) a refund of the contributions made to the fund, with interest as provided in section 241(a), except that in lieu of such refund such participant, if he has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), may elect to receive retirement benefits on reaching the age of sixty in accordance with the provisions of section 221. In the event that a participant who was separated from grade GS-13 or GS-12 and who has elected to receive retirement benefits dies before reaching the age of sixty, his death shall be considered a death in service within the meaning of section 232. In the event that a participant who was separated from grade GS-11 or below and who has elected to receive retirement benefits dies before reaching the age of sixty, the total amount of his contributions made to the fund, with interest as provided in section 241(a), shall be paid in accordance with the provisions of section 241(b).

(e) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended (31 U.S.C. 203), or the provisions of any other law, a participant who is retired in accordance with the provisions of paragraph (d) of this section shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (d)(1) of this section.

MANDATORY RETIREMENT FOR AGE

SEC. 235. (a) Any participant in the system in grade GS-18 or above shall upon reaching the age of sixty-five be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such a participant's service for a period not to exceed five years.

(b) Any participant in the system, other than in grade GS-18 or above, shall upon reaching the age of sixty be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such a participant's service for a period not to exceed five years.

PART E—DISPOSITION OF CONTRIBUTIONS AND INTEREST IN EXCESS OF BENEFITS RECEIVED

SEC. 241. (a) Whenever a participant becomes separated from the Agency without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the total amount of contributions from his salary with interest thereon at 4 per centum per annum, compounded annually as of Decem-

5901

ber 31, and proportionately for the period served during the year of separation including all contributions made during or for such period, except as provided in section 281, shall be returned to him.

(b) In the event that the total contributions of a retired participant, other than voluntary contributions made in accordance with the provisions of section 281, with interest at 4 per centum per annum compounded annually as is provided in paragraph (a) of this section added thereto, exceed the total amount returned to such participant or to an annuitant claiming through him, in the form of annuities, accumulated at the same rate of interest up to the date the annuity payments cease under the terms of the annuity, the excess of the accumulated contributions over the accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim, therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries designated by such participant in writing to the Director;

(2) If there be no such beneficiary, to the surviving wife or husband of such participant;

(3) If none of the above, to the child or children of such participant and descendants of deceased children by representation;

(4) If none of the above, to the parents of such participant or the survivor of them;

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant;

(6) If none of the above, to other next of kin of such participant as may be determined by the Director in his judgment to be legally entitled thereto.

(c) No payment shall be made pursuant to paragraph (b) (6) of this section until after the expiration of thirty days from the death of the retired participant or his surviving annuitant.

PART F—PERIOD OF SERVICE FOR ANNUITIES

COMPENSATION OF LENGTH OF SERVICE

SEC. 251. For the purposes of this title, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et. seq.), and leaves of absence granted participants while performing active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

PRIOR SERVICE CREDIT

SEC. 252. (a) A participant may, subject to the provisions of this section, include in his period of service—

(1) civilian service in the executive, judicial, and legislative branches of the Federal Government and in the District of Columbia government, prior to becoming a participant; and

(2) active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(b) A participant may obtain prior civilian service credit in accordance with the provisions of paragraph (a) (1) of this section by making a special contribution to the fund equal to 5 per centum of his basic annual salary for each year of service for which credit is sought prior to November 8, 1960, and at 6½ per centum thereafter with interest compounded annually at 4 per centum per annum to the date of payment. Any such participant may, under such conditions as may be determined in each instance by the Director, pay such special contributions in installments.

(c) (1) If an officer or employee under some other Government retirement system becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to the fund effective as of the date such officer or employee becomes a participant in the system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims

5902

and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

(2) No participant, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall be required to make contributions in addition to those transferred for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such participant on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by section 211 of this Act for contributions to the fund.

(3) No participant, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall receive credit for periods of service for which a refund of contributions has been made, or for which no contributions were made to the other Government retirement fund. A participant may, however, obtain credit for such prior service by making a special contribution to the fund in accordance with the provisions of paragraph (b) of this section.

(d) No participant may obtain prior civilian service credit toward retirement under the system for any period of civilian service on the basis of which he is receiving or will in the future be entitled to receive any annuity under another retirement system covering civilian personnel of the Government.

(e) A participant may obtain prior military or naval service credit in accordance with the provisions of paragraph (a) (2) of this section by applying for it to the Director prior to retirement or separation from the Agency. However, in the case of a participant who is eligible for and receives retired pay on account of military or naval service, the period of service upon which such retired pay is based shall not be included, except that in the case of a participant who is eligible for and receives retired pay on account of a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or is awarded under chapter 67 of title 10 of the United States Code, the period of such military or naval service shall be included. No contributions to the fund shall be required in connection with military or naval service credited to a participant in accordance with the provisions of paragraph (a) (2) of this section.

CREDIT FOR SERVICE WHILE ON MILITARY LEAVE

SEC. 253. Contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

PART G—MONEYS

ESTIMATE OF APPROPRIATIONS NEEDED

SEC. 261. The Director shall prepare the estimates of the annual appropriations required to be made to the fund, and shall cause to be made actuarial valuations of the fund at intervals of five years, or oftener if deemed necessary by him.

INVESTMENT OF MONEYS IN THE FUND

SEC. 262. The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in his judgement may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such fund.

ATTACHMENT OF MONEYS

SEC. 263. None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 234(e).

5903

PART H—RETIRED PARTICIPANTS RECALLED, REINSTATED, OR REAPPOINTED IN THE AGENCY, OR REEMPLOYED IN THE GOVERNMENT

RECALL

SEC. 271. (a) The Director may recall any retired participant to duty in the Agency whenever he shall determine such recall is in the public interest.

(b) Any such participant recalled to duty in the Agency in accordance with the provisions of paragraph (a) of this section or reinstated or reappointed in accordance with the provisions of section 231(b) shall, while so serving, be entitled in lieu of his annuity to the full salary of the grade in which he is serving. During such service, he shall make contributions to the fund in accordance with the provisions of section 211. When he reverts to his retired status, his annuity shall be determined anew in accordance with the provisions of section 221.

REEMPLOYMENT

SEC. 272. Notwithstanding any other provision of law, a participant retired under the provisions of this Act shall not, by reason of his retired status, be barred from employment in Federal Government service in any appointive position for which he is qualified. An annuitant so reemployed shall serve at the will of the appointing officer.

REEMPLOYMENT COMPENSATION

SEC. 273. (a) Notwithstanding any other provision of law, any annuitant who has retired under this Act and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this Act which when combined with such salary does not exceed during any calendar year the basic salary such annuitant was entitled to receive on the date of his retirement from the Agency. Any such reemployed annuitant who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits hereunder.

(b) When any such retired annuitant is reemployed, the employer shall send a notice to the Agency of such reemployment together with all pertinent information relating thereto, and shall pay directly to such annuitant the salary of the position in which he is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed annuitant, or from any other moneys, including his annuity, payable in accordance with the provisions of this title.

PART I—VOLUNTARY CONTRIBUTIONS

SEC. 281. (a) Any participant may, at his option and under such regulations as may be prescribed by the Director, deposit additional sums in multiples of 1 per centum of his basic salary, but not in excess of 10 per centum of such salary, which amounts together with interest at 3 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of his retirement, including all contributions made during or for such period, shall, at the date of his retirement and at his election, be—

- (1) returned to him in lump sum; or
- (2) used to purchase an additional life annuity; or
- (3) used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Director by the participant; or
- (4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Director by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in subparagraph (3) above.

(b) The benefits provided by subparagraphs (2), (3), or (4) of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by subparagraph (a) (1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

5904

(c) In case a participant shall become separated from the Agency for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum, compounded as is provided in paragraph (a) of this section, made by him under the provisions of said paragraph (a) shall be refunded in the manner provided in section 241 for the return of contributions and interest in the case of death or separation from the Agency.

(d) Any benefits payable to a participant or to his beneficiary in respect to the additional deposits provided under this section shall be in addition to the benefits otherwise provided under this title.

TITLE III—INTERNAL REVENUE CODE AMENDMENT

Paragraph (4) of section 104(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 104(a)(4)) (relating to the exclusion from gross income of compensation for injuries and sickness), is hereby amended to read as follows:

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081, 60 Stat. 1021), or as a disability annuity payable under the provisions of section 231 of the Central Intelligence Agency Retirement Act of 1963."

CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT OF 1963

SECTIONAL ANALYSIS AND EXPLANATION

(NOTE.—Except for such changes as are necessary to reflect terminology applicable to the Central Intelligence Agency, most of the proposed provisions are substantively the same as, or identical with, the corresponding provisions of the Foreign Service Act of 1946, as amended. For convenient reference, the corresponding section number under the Foreign Service Act of 1946, as amended, is furnished at the end of each explanatory statement below (for example, "Sec. 801, FSA") where applicable.)

* * * * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND DEFINITIONS

PART A—SHORT TITLE

SEC. 101. Titles I to III, inclusive, of this Act may be cited as the "Central Intelligence Agency Retirement Act of 1963".

Explanation.—This section provides a short title for this bill.

PART B—DEFINITIONS

SEC. 111. When used in this Act, the term—

- (1) "Agency" means the Central Intelligence Agency; and
- (2) "Director" means the Director of Central Intelligence or the Deputy Director of Central Intelligence.

Explanation.—This section defines the terms "Agency" and "Director" as these terms are used throughout the bill.

TITLE II—THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART A—ESTABLISHMENT OF SYSTEM

RULES AND REGULATIONS

SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency retirement and disability system for a limited number of employees, referred to hereafter as the system.

5905

(b) The Director shall administer the system in accordance with such rules and regulations and with the principles established by this Act.

(c) In the interests of the security of the foreign intelligence activities of the United States, and in order further to implement the proviso of section 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C. 403 (d)(3)), that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and, notwithstanding the provisions of the Administration Procedure Act (5 U.S.C. 1001 et. seq.) or any other provisions of law, any determinations by the Director authorized by the provisions of this title shall be deemed to be final and conclusive and not subject to review by any court.

Explanation.—This section gives the Director of Central Intelligence the authority necessary to establish and maintain a retirement system for a limited number of employees and to prescribe rules and regulations governing its administration (sec. 801, FSA).

In view of the security classification of information concerning the service of Agency employees, the facts pertinent to determinations made under this Act will ordinarily be of such a nature that they cannot be publicly disclosed. Accordingly the section provides that determinations of the Director under this Act are final and conclusive and not subject to review. Legislative precedent for this provision is contained in the Civil Service Retirement Act which provides in section 16(c) that determinations by the Commission of questions of dependency and disability under that Act are not reviewable. Other precedents are contained in the Atomic Energy Act which provides that, where restricted data are involved, determinations of the Commission will not be subject to judicial review and in the Foreign Claims Settlement Act of 1949. (See 42 U.S.C. 2231 and 22 U.S.C. 1623(h).)

ESTABLISHMENT AND MAINTENANCE OF FUND

SEC. 202. There is hereby created a fund to be known as the Central Intelligence Agency Retirement and Disability Fund which shall be maintained by the Director. The Central Intelligence Agency Retirement and Disability Fund is referred to hereafter in this title as the fund.

Explanation.—This section provides for establishment and maintenance of the Central Intelligence Agency Retirement and Disability Fund by the Director (sec. 802, FSA, and 43 Stat. 144).

PARTICIPANTS

SEC. 203. The Director may designate from time to time such Agency officers and employees, hereafter referred to as participants, who shall be entitled to the benefits of the system. Any participant who has completed fifteen years of service with the Agency and whose career at that time is adjudged by the Director to be qualifying for the system may elect to remain a participant of such system for the duration of his employment by the Agency.

Explanation.—This section necessarily deviates from the comparable provision of the Foreign Service Act of 1946, as amended, since Foreign Service Officers are automatically covered by virtue of their appointments under the Foreign Service Act. However, only a limited number of Agency employees will serve under conditions which will warrant other than normal retirement considerations and those who are to be designated as participants pursuant to this section will undergo a rigid selection process (sec. 803, FSA).

This retirement system is designed for those officers whose careers over the years are predominantly concerned with the conduct and support of intelligence activities in foreign countries. It is intended to designate an employee as a participant in this system at the earliest time after he has gained full career employee status in the Agency that it can be determined that his career field of work is in the conduct and support of intelligence activities in foreign countries. Thereafter, his service record will be reviewed periodically to verify that his career has remained in this field and that he is in fact performing qualifying service. If on such review it should be determined that an officer's career specialization has permanently shifted to a different field, he will be transferred to the civil service retirement system. However,

5906

when an employee who has been designated as a participant has met all of the minimum requirements for retirement under this system and then shifts to another field of career specialization, he would ordinarily be viewed as having acquired a right to the benefits he has already earned under this system and would be permitted to remain in it. Consequently, the section provides that an employee who has completed fifteen years of service in the Agency and whose career at that time is adjudged to be qualifying for this system may elect to remain in this system for the duration of his employment by the Agency.

ANNUITANTS

SEC. 204. (a) Annuitants shall be participants who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, dependent widowers, children, and beneficiaries of participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this title the term—

(1) "Widow" means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or who is the mother of issue by such marriage.

(2) "Dependent widower" means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or who is the father of issue by such marriage, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

(3) "Child" means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before age eighteen, is incapable of self-support. In addition to the offspring of the participant and his or her spouse, the term includes (i) an adopted child, and (ii) a stepchild or recognized natural child who received more than one-half of his support from the participant.

Explanation.—This section defines annuitants who may be eligible for benefits under the retirement system (Sec. 204, FSA).

PART B—COMPULSORY CONTRIBUTIONS

SEC. 211. (a) Six and one-half per centum of the basic salary received by each participant shall be contributed to the fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Agency to the credit of the fund.

(b) Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

Explanation.—This section provides for contributions to the retirement fund by the employee and by the Agency at the rate of six and one-half per cent of basic salary, which is the same under both the Foreign Service retirement system and the civil service retirement system (Sec. 811, FSA).

PART C—COMPUTATION OF ANNUITIES

SEC. 221. (a) The annuity of a participant shall be equal to two per centum of his average basic salary for the highest five consecutive years of service, for which full contributions have been made to the fund, multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 251 and 252. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted.

5907

(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife or her husband, commencing on the date following such participant's death and terminating upon the death of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by $2\frac{1}{2}$ per centum of any amount up to \$2,400 he specifies as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) 40 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$600; or (iii) \$1,800 divided by the number of children.

(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) 50 per centum of the annuitant's average basic salary, as determined under paragraph (a) of this section, divided by the number of children; (ii) \$720; or (iii) \$2,160 divided by the number of children.

(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant.

(e) The annuity payable to a child under paragraph (c) or (d) of this section, shall begin on the first day of the next month after the participant dies and such annuity or any right thereto shall be terminated upon death, marriage, or attainment of the age of eighteen years, except that, if a child is incapable of self-support by reasons of mental or physical disability, the annuity shall be terminated only when such child dies, marries, or recovers from such disability.

(f) Any unmarried participant retiring under the provisions of this Act and found by the Director to be in good health may at the time of retirement elect a reduced annuity, in lieu of the annuity as hereinbefore provided, and designate in writing a person having an insurable interest (as that term is used in 5 U.S.C. 2259(h)) in the participant to receive an annuity after the participant's death. The annuity payable to the participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section, and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the participant, but such total reduction shall not exceed 40 per centum. The annuity of a survivor designated under this paragraph shall be 50 per centum of the reduced annuity computed as prescribed above. The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.

Explanation.—This section establishes the rates of annuities payable to participants and specified beneficiaries under the retirement system. Comparable provision is made in section 804 of the Foreign Service Act except that the first sentence of paragraph (f), regarding the designation of a beneficiary by an unmarried participant, uses language employed for the comparable provision in the Civil Service Retirement Act (sec. 9(h)) which provides that such individual must have an insurable interest in the participant.

PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

RETIREMENT FOR DISABILITY OR INCAPACITY—MEDICAL EXAMINATION—RECOVERY

SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a)(2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the Director,

5908

be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his grade in the Agency.

(b) In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade in the Agency. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application, the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(c) If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered to have been separated within the meaning of paragraphs (a) and (b) of section 234 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241(a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions.

(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself under the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et seq.), covering the same period of time. This provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period of time. Neither this provision nor any provision of the said Act of September 7, 1916, as amended, shall be so construed as to deny the right of any person to receive an annuity under this Act by reason of his own services and to receive concurrently any payment under such Act of September 7, 1916, as amended, by reason of the death of any other person.

(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 14 of the Federal Employees' Compensation Act of September 7, 1916, as amended. (5 U.S.C. 764), except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such person shall receive such annuity, he shall (1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such Fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

Explanation—This section makes provision for retirement of employees who become disabled or incapacitated for duty. It establishes

5909

procedures for physical examinations and subsequent return to duty when an annuitant has recovered to the extent that he can return to duty. The section further bars payment of a disability annuity if the employee is given an award of compensation for the same disability under the Federal Employees' Compensation Act (sec. 831, FSA).

DEATH IN SERVICE

SEC. 232. (a) In case a participant dies and no claim for annuity is payable under the provisions of this Act, his contributions to the fund, with interest at the rates prescribed in sections 241(a) and 281(a), shall be paid in the order of precedence shown in section 241(b).

(b) If a participant, who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a widow or a dependent widower, as defined in section 204, such widow or dependent widower shall be entitled to an annuity equal to 50 per centum of the annuity computed in accordance with the provisions of paragraph (e) of this section and of section 221(a). The annuity of such widow or dependent widower shall commence on the date following death of the participant and shall terminate upon death of the widow or dependent widower, or upon the dependent widower's becoming capable of self-support.

(c) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(1). The child's annuity shall begin and be terminated in accordance with the provisions of section 221(e). Upon the death of the surviving wife or husband or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though such wife or husband or child had not survived the participant.

(d) If a participant who has at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with the provisions of section 221(c)(2). The child's annuity shall begin and terminate in accordance with the provisions of section 221(e). Upon termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though that child had never been entitled to the benefit.

(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the system, the annuities payable in accordance with paragraph (b) of this section shall be computed in accordance with the provisions of section 221 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this provision shall in no case exceed the difference between his or her age on the date of death and the mandatory retirement age applicable to his or her grade in the Agency. In all cases arising under paragraphs (b), (c), (d), or (e) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of his death.

Explanation.—This section provides for payment of an annuity to the survivor(s) of an employee who dies while in active service. If no annuity is payable, this section provides for payment of his contributions plus interest to a named beneficiary, or to specified survivors, or to his estate, in a prescribed order of precedence (sec. 832, FSA).

VOLUNTARY RETIREMENT

SEC. 233. Any participant in the System who is at least fifty years of age and has rendered twenty years of service may on his own application and with the consent of the Director be retired from the Agency and receive benefits in accordance with the provisions of section 221 provided he has not less than five years of service with the Agency.

5910

Explanation.—This section provides for voluntary retirement of an officer when he reaches age 50 and has at least five years of Agency service and a total of twenty years of service credit under the system (sec. 636, FSA).

DISCONTINUED SERVICE RETIREMENT

SEC. 234. (a) Any participant who separates from the Agency after obtaining at least five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), may, upon separation from the Agency or at any time prior to becoming eligible for an annuity, elect to have his contributions to the fund returned to him in accordance with the provisions of section 241, or (except in cases where the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States) to leave his contributions in the fund and receive an annuity, computed as prescribed in section 221, commencing at the age of sixty years.

(b) If a participant who has qualified in accordance with the provisions of paragraph (a) of this section to receive a deferred annuity commencing at the age of sixty dies before reaching the age of sixty his contributions to the fund, with interest, shall be paid in accordance with the provisions of sections 241 and 281.

(c) The Director may in his discretion retire participants in grade GS-14 and above to promote the efficiency of the Agency. If so retired, they shall receive retirement benefits in accordance with the provisions of section 221, provided they have in each case not less than five years of qualifying and a total of ten years of service with the Agency. Any individual so retired who does not meet these service requirements shall receive the benefits provided for individuals in grade GS-13 as set out in paragraph (d) of this section.

(d) The Director may in his discretion retire participants in grade GS-13 and below to promote the efficiency of the Agency and each such participant shall receive —

(1) one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then current salary rate, payable without interest, from the fund, in three equal installments on the 1st day of January following the participant's retirement and on the two anniversaries of this date immediately following: *Provided*, That in special cases, the Director may, in his discretion, accelerate or combine the installments; and

(2) a refund of the contributions made to the fund, with interest as provided in section 241(a), except that in lieu of such refund such participant, if he has at least five years of service credit toward retirement under the system excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), may elect to receive retirement benefits on reaching the age of sixty in accordance with the provisions of section 221. In the event that a participant who was separated from grade GS-13 or GS-12 and who has elected to receive retirement benefits dies before reaching the age of sixty, his death shall be considered a death in service within the meaning of section 232. In the event that a participant who was separated from grade GS-11 or below and who has elected to receive retirement benefits dies before reaching the age of sixty, the total amount of his contributions made to the fund, with interest as provided in section 241(a), shall be paid in accordance with the provisions of section 241(b).

(e) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended, (31 U.S.C. 203), or the provisions of any other law, a participant who is retired in accordance with the provisions of paragraph (d) of this section shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (d)(1) of this section.

Explanation.—This section provides for the involuntary retirement of employees by the Director in order to promote the efficiency of the Agency. The comparable provisions of the FSA relate to "selection-out" of officers who fail of promotion or who do not meet required standards of performance.

5911

Retirement benefits provided for employees in GS-14 and above are the same as those provided for Foreign Service officers in classes 1, 2, and 3 except that more stringent service requirements have been established for this system. In order to be retired with an immediate annuity, an employee in GS-14 and above must have at least ten years of service with the Agency which includes at least five years of service of a nature qualifying him for coverage under this system. Employees in GS-14 and above who do not meet these service requirements will receive the benefits provided for employees in GS-13. The retirement benefits provided for employees in GS-13 and below are the same as those provided for Foreign Service officers in class 4 and below. The linkage levels established in the Federal Salary Reform Act of 1962 (Public Law 87-793) to provide comparability for pay purposes have been used to relate Foreign Service classes to the Agency's general schedule grades.

Comparable sections of FSA are as follows:

<i>CIA system</i>	<i>Foreign Service system</i>
Sec. 234(a). Refund of contributions.	Secs. 834(a) and 637(b).
Sec. 234(b). Disposition of contributions upon death prior to receipt of deferred annuity.	Sec. 834(b).
Sec. 234(c). Involuntary retirement — employees in grades GS-14 and above.	Secs. 519, 633(b), and 634(a).
Sec. 234(d). Involuntary retirement — employees in grades GS-13 and below.	Secs. 633(b) and 634(b).
Sec. 234(e). Assignment of benefits.	Sec. 634(c).

MANDATORY RETIREMENT FOR AGE

SEC. 235. (a) Any participant in the system in grade GS-18 or above shall upon reaching the age of sixty-five, be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such a participant's service for a period not to exceed five years.

(b) Any participant in the system, other than in grade GS-18 or above, shall, upon reaching the age of sixty, be retired from the Agency and receive retirement benefits in accordance with the provisions of section 221, but whenever the Director shall determine it to be in the public interest, he may extend such a participant's service for a period not to exceed five years.

Explanation.—This section provides for the mandatory retirement of employees in GS-18 or above upon reaching age 65 and of other employees upon reaching age 60. As in the preceding section, conversion to Agency grades was achieved by application of the linkage levels established in the Federal Salary Reform Act of 1962 (secs. 631 and 632, FSA).

PART E—DISPOSITION OF CONTRIBUTIONS AND INTEREST IN EXCESS OF BENEFITS RECEIVED

SEC. 241. (a) Whenever a participant becomes separated from the Agency without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the total amount of contributions from his salary, with interest thereon at 4 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of separation, including all contributions made during or for such period, except as provided in section 281, shall be returned to him.

(b) In the event that the total contributions of a retired participant, other than voluntary contributions made in accordance with the provisions of section 281, with interest at 4 per centum per annum compounded annually as is provided in paragraph (a) of this section added thereto, exceed the total amount returned to such participant or to an annuitant claiming through him, in the form of annuities, accumulated at the same rate of interest up to the date the annuity

5912

payments cease under the terms of the annuity, the excess of the accumulated contributions over the accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries designated by such participant in writing to the Director;

(2) If there be no such beneficiary, to the surviving wife or husband of such participant;

(3) If none of the above, to the child or children of such participant and descendants of deceased children by representation;

(4) If none of the above, to the parents of such participant or the survivor of them;

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant;

(6) If none of the above, to other next of kin of such participant as may be determined by the Director in his judgment to be legally entitled thereto.

(c) No payment shall be made pursuant to paragraph (b) (6) of this section until after the expiration of thirty days from the death of the retired participant or his surviving annuitant.

Explanation.—This section provides for the refund of contributions, plus interest at 4 percent to an employee who is separated without attaining eligibility for an immediate or deferred annuity.

The section further provides for the disposition of contributions, plus interest at 4 percent, which are in excess of the amounts paid to a participant or to an annuitant claiming through him. If at the time annuity payments cease, the accumulated annuities paid to the participant or to an annuitant claiming through him, or both, are less than the total amount of the contributions of the participant, plus interest at 4 percent, the excess of such contributions and interest is payable to a surviving spouse, children, parents, or estate of a deceased participant or to his named beneficiary in the same order of precedence as has been established under the Foreign Service and the Civil Service retirement systems (sec. 841, FSA).

PART F—PERIOD OF SERVICE FOR ANNUITIES

COMPUTATION OF LENGTH OF SERVICE

SEC. 251. For the purpose of this title, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et. seq.), and leaves of absence granted participants while performing active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

Explanation.—This section provides that the period of service of a participant under this system shall begin as of the date he becomes a participant but excludes periods of separation from the Agency or leaves of absence in excess of six months except when such leave is during a period when the participant is receiving benefits under the Federal Employees' Compensation Act (for illness or injury incurred in the performance of duty) or when such leave is for military service (sec. 851, FSA).

PRIOR SERVICE CREDIT

SEC. 252. (a) A participant may, subject to the provisions of this section, include in his period of service—

(1) civilian service in the executive, judicial, and legislative branches of the Federal Government and in the District of Columbia government, prior to becoming a participant; and

(2) active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

(b) A participant may obtain prior to civilian service credit in accordance with the provisions of paragraph (a) (1) of this section by making a special contribution to the fund equal to 5 per centum of his basic annual salary for each

5913

year of service for which credit is sought prior to November 8, 1960, and at 6½ per centum thereafter with interest compounded annually at 4 per centum per annum to the date of payment. Any such participant may, under such conditions as may be determined in each instance by the Director, pay such special contributions in installments.

(c) (1) If an officer or employee under some other Government retirement system becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits, including interest accrued thereon, except voluntary contributions, shall be transferred to the fund effective as of the date such officer or employee becomes a participant in the system. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

(2) No participant, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section shall be required to make contributions in addition to those transferred, for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such officer or employee on account of contributions made during any period to the other Government retirement fund, at a higher rate than that fixed by section 211 of this Act for contributions to the fund.

(3) No officer or employee, whose contributions are transferred to the fund in accordance with the provisions of paragraph (c) (1) of this section, shall receive credit for periods of service for which a refund of contributions has been made, or for which no contributions were made to the other Government retirement fund. A participant may, however, obtain credit for such prior service by making a special contribution to the fund in accordance with the provisions of paragraph (b) of this section.

(d) No participant may obtain prior civilian service credit toward retirement under the system for any period of civilian service on the basis of which he is receiving or will in the future be entitled to receive any annuity under another retirement system covering civilian personnel of the Government.

(e) A participant may obtain prior military or naval service credit in accordance with the provisions of paragraph (a) (2) of this section by applying for it to the Director prior to retirement or separation from the Agency. However, in the case of a participant who is eligible for and receives retired pay on account of military or naval service, the period of service upon which such retired pay is based shall not be included, except that in the case of a participant who is eligible for and receives retired pay on account of a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 28, United States Code), or is awarded under chapter 67 of title 10 of the United States Code, the period of such military or naval service shall be included. No contributions to the fund shall be required in connection with military or naval service credited to a participant in accordance with the provisions of paragraph (a) (2) of this section.

Explanation.—This section establishes the conditions for credit under the retirement system of previous civilian and military service. This section permits inclusion of prior qualifying service, as that term is used in the Act, performed at any time as an employee in the Agency for the transfer of an individual's contributions from other Government retirement systems to the Central Intelligence Agency Retirement and Disability Fund. These provisions are comparable to those of the Foreign Service and the civil service retirement system (sec. 852, FSA).

CREDIT FOR SERVICE WHILE ON MILITARY LEAVE

SEC. 253. Contributions shall not be required covering periods of leave of absence from the Agency granted a participant while performing active military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

Explanation.—This section waives any requirement for contributions to the fund during leave of absence for military or naval service (sec. 854, FSA).

5914

PART G—MONEYS

ESTIMATE OF APPROPRIATIONS NEEDED

SEC. 261. The Director shall prepare the estimates of the annual appropriations required to be made to the fund, and shall cause to be made actuarial valuations of the fund at intervals of five years, or oftener if deemed necessary by him.

Explanation.—This section provides for estimates of annual appropriations required to be made to the fund and for actuarial valuation of the fund at least every 5 years. It is identical with section 861, FSA, except that there has been deleted the authorization to expend money for administering the program from the fund since funds required for such purposes would be provided by annual appropriations.

INVESTMENT OF MONEYS IN THE FUND

SEC. 262. The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in his judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such fund.

Explanation.—This section provides necessary authority for the Director to invest funds which are not immediately required and to deposit the income produced by such investment to the fund (sec. 863, FSA).

ATTACHMENT OF MONEYS

SEC. 263. None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 234(e).

Explanation.—This section provides necessary protection to moneys in the fund to preserve them for the payment of annuities, cash benefits, refunds, and allowances as provided under the proposed retirement system (sec. 864, FSA).

PART H—RETIRED PARTICIPANTS RECALLED, REINSTATED OR REAPPOINTED IN THE AGENCY OR REEMPLOYED IN THE GOVERNMENT

RECALL

SEC. 271. (a) The Director may recall any retired participant to duty in the Agency whenever he shall determine such recall is in the public interest.

(b) Any such participant recalled to duty in the Agency in accordance with the provisions of paragraph (a) of this section or reinstated or reappointed in accordance with the provisions of section 231(b) shall, while so serving, be entitled in lieu of his annuity to the full salary of the grade in which he is serving. During such service, he shall make contributions to the fund in accordance with the provisions of section 211. When he reverts to his retired status, his annuity shall be determined anew in accordance with the provisions of section 221.

Explanation.—This section provides for the recall to active service of an annuitant when necessary in the public interest. It further provides that such a recalled annuitant shall be entitled to the full salary of the grade in which he serves upon recall and for recomputation of his annuity upon completion of such service (secs. 520(b) and 871, FSA).

REEMPLOYMENT

SEC. 272. Notwithstanding any other provision of law, a participant retired under the provisions of this Act shall not, by reason of his retired status, be barred from employment in Federal Government service in any appointive position for which he is qualified. An annuitant so reemployed shall serve at the will of the appointing officer.

Explanation.—This section authorizes the reemployment in Government of an employee retired under the Agency system. This authority is similar to that applicable to civil service retirees and is comparable to section 520(c) FSA.

5915

REEMPLOYMENT COMPENSATION

SEC. 273. (a) Notwithstanding any other provision of law, any annuitant who has retired under this Act and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this Act which when combined with such salary does not exceed during any calendar year the basic salary such annuitant was entitled to receive on the date of his retirement from the Agency. Any such reemployed annuitant who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits hereunder.

(b) When any such retired annuitant is reemployed, the employer shall send a notice to the Agency of such reemployment together with all pertinent information relating thereto, and shall pay directly to such annuitant the salary of the position in which he is serving.

(c) In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed annuitant, or from any other moneys, including his annuity, payable in accordance with the provisions of this title.

Explanation.—This section provides that an annuitant who is reemployed in the Federal service in an appointive position is entitled to retain the salary of his position plus his annuity up to a combined amount which does not exceed the basic salary of the grade which he held upon retirement. In the event of an overpayment, the amount of such overpayment may be withheld from either the salary or the annuity payable to the reemployed annuitant (sec. 872, FSA).

PART I—VOLUNTARY CONTRIBUTIONS

SEC. 281. (a) Any participant may, at his option and under such regulations as may be prescribed by the Director, deposit additional sums in multiples of 1 per centum of his basic salary, but not in excess of 10 per centum of such salary, which amounts together with interest at 3 per centum per annum, compounded annually as of December 31, and proportionately for the period served during the year of his retirement, including all contributions made during or for such period, shall, at the date of his retirement and at his election, be—

(1) returned to him in lump sum; or

(2) used to purchase an additional life annuity; or

(3) used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Director by the participant; or

(4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Director by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in subparagraph (3) above.

(b) The benefits provided by subparagraphs (2), (3), or (4) of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by subparagraph (a) (1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

(c) In case a participant shall become separated from the Agency for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum, compounded as is provided in paragraph (a) of this section, made by him under the provisions of said paragraph (a) shall be refunded in the manner provided in section 241 for the return of contributions and interest in the case of death or separation from the Agency.

(d) Any benefits payable to a participant or to his beneficiary in respect to the additional deposits provided under this section shall be in addition to the benefits otherwise provided under this title.

Explanation.—This section provides for an employee to make voluntary contributions to the fund if he wishes to do so in order to increase the annuity to be paid to him or to a survivor upon his retirement or death. Similar provision is contained in both the Foreign Service and the civil service retirement systems (sec. 881, FSA).

5916

TITLE III—INTERNAL REVENUE CODE AMENDMENT

Paragraph (4) of section 104(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 104(a)(4)) (relating to the exclusion from gross income of compensation for injuries and sickness) is hereby amended to read as follows:

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081, 60 Stat. 1021), or as a disability annuity payable under the provisions of section 231 of the Central Intelligence Agency Retirement Act of 1963."

Explanation.—This section amends paragraph 4 of section 104(a) of the Internal Revenue Code of 1954 to exempt disability annuities under title II of this act from Federal income tax. This is the same exemption already accorded similar annuities for participants under the Foreign Service disability and retirement system and for members of the uniformed services. (This section was favorably reviewed by the Department of Treasury in processing within the executive branch.)

Mr. WARNER. Page 1, line 5, this is a new title to the bill. I don't believe it needs any explanation. At line 10 we have the inclusion of the Deputy Director within the definition of director to permit General Carter to make the determinations required under the act.

Mr. HARDY. Is that the normal procedure to write that into the statute?

Isn't that normally accomplished by delegation?

Mr. WARNER. Well, we felt that these actions are of sufficient importance that it ought to be abundantly clear. It does vary—sometimes it is in statutes; sometimes not. We thought it would be better to make it clear that the Deputy Director is fully authorized to act for Director in these situations.

Mr. HARDY. I think that is probably all right, but every now and then when we get into situations where there are circumstances as important as these, it has generally been the thinking that the ultimate responsibility ought to be placed exclusively on the top administrative officer, which in this case would be the Director. I don't know whether—

Mr. BATES. And he delegates it if he wants to?

Mr. HARDY. Yes. Then in the event you have got a real comeback—

Mr. RIVERS. I can't conceive how there would be any difference of opinion between the two because the President would certainly remove him if there were any shenanigans between the two of them. I don't see how it can hurt.

Mr. BLANDFORD. Does the Foreign Service Act give this authority to the Secretary of State and does he delegate it or does it—

Mr. WOODYEAR. It is given to the Secretary of State and delegated to the personnel director.

Mr. BLANDFORD. You have never had any problem then, insofar as interpretations are concerned, that a delegated authority affecting a retirement has been questioned, I mean to your knowledge?

Mr. WOODYEAR. To my knowledge we have never had any problem with it.

Mr. HARDY. I just have a doubt in my mind that we ought to have a departure from what is normal practice in this. That is all.

Mr. BLANDFORD. Nothing actually is added or detracted from it, Mr. Hardy, if it were deleted.

5917

Mr. HARDY. That was my thinking.

Mr. BENNETT. I am inclined to delete it.

Mr. BATES. I so move.

Mr. RIVERS. Without objection. Go ahead.

Mr. BATES. I did have the same question that Mr. Hardy had. But also is this the language we finally decided on: "Central Intelligence Agency Retirement Act of 1963"?

Is that how we finally left it, even though it is only partial?

Mr. RIVERS. What we decided to do is just take up roughly section 302 or what was it?

Mr. BLANDFORD. Titles 2 and 3.

Mr. WARNER. Yes. You had expressed the will to take out all of these other provisions and merely deal with retirement, so this is a retirement act.

Mr. RIVERS. That is what we decided.

Mr. BATES. Except it is not in as general a nature as the title seems to suggest.

Mr. BLANDFORD. Couldn't we amend this?

I think we missed it some place here, what we are really talking about—

Mr. BATES. Special.

Mr. BLANDFORD. More than that, limited.

We ought to call it the Central Intelligence Agency Limited Retirement Act of 1963 or the CIA Limited Retirement Act or something of that nature.

Mr. WARNER. This had been discussed at the prior hearing and the limited point is in the statement of the purpose and it is also in section 201 which we have not come to yet.

Mr. BENNETT. It is the only retirement act for the CIA of 1963, so it is accurate.

Mr. HARDY. But it does not affect all of CIA's employees.

Mr. BENNETT. But it does not purport to.

Mr. RIVERS. Why don't you make that consistent, Mr. Blandford?

Mr. BATES. He says 1963, I think we are quibbling a little bit.

Mr. RIVERS. I think we may be.

Mr. BENNETT. Just because you have a Central Intelligence Act of 1963 does not mean it has to apply to everything in the whole Agency.

Mr. RIVERS. There are some long-term employees that are suffering and these are the ones we want to be sure of.

Mr. BLANDFORD. Why don't we put the word "restricted" before the word "retirement"?

"The Central Intelligence Agency Restricted Retirement Act of 1963," to have the title at least carry with it the idea that it is restricted in its application.

Mr. HARDY. I believe something of that kind would be helpful.

Mr. BLANDFORD. Would there be any objection to that?

General CARTER. No.

Mr. WARNER. No.

Mr. RIVERS. I don't see any. We may be quibbling a little bit. Like Mr. Bennett said there would be no other.

Mr. BENNETT. Why don't you say "for certain employees," that is more like it.

5918

Mr. BLANDFORD. You could put that in there. "For certain employees" would even be more descriptive of what you are doing.

Mr. RIVERS. I think so, too.

Mr. BLANDFORD. Central Intelligence Agency Act of 1963 for certain employees.

Mr. BENNETT. That shows it is not for all employees.

Mr. BLANDFORD. All right.

Mr. RIVERS. All right; go ahead.

Mr. STRATTON. Mr. Chairman, I am just a little confused here. What does this document represent again? I have before me the printed text of H.R. 7216, I have the mimeographed document. You have underlined certain items but the differences between this and the printed version of H.R. 7216 are more than what you have underlined.

Mr. BLANDFORD. We agreed at the last meeting to eliminate practically all of title I which carried with it a lot more features. In other words, there was a question in there of permitting the Agency to receive gifts—

Mr. STRATTON. I am just trying to find out what this printed document represents.

General CARTER explained it a moment ago, but I don't follow his explanation.

General CARTER. It is a clean draft, sir, of the bill that we were working on back in July with amendments indicating the will of the subcommittee underlined in blue.

Mr. STRATTON. Now there are amendments which have not been underlined. Why have you underlined some changes and not others?

General CARTER. Only because of the omission of title I which had a number of administrative niceties that we had hoped to clean up in this bill; but it seemed more appropriate to delete them.

Mr. STRATTON. I am just a little confused, the very first line, for example, "to provide for the establishment and maintenance of a Central Intelligence Agency retirement disability system" is different from the title in H.R. 7216, and yet there was not any underlining there.

I wonder whether there is some particular significance in those changes which you have made which you have underlined and those changes which you have made which you have not underlined.

Mr. BLANDFORD. The title actually should have been underlined.

Mr. STRATTON. It seems to me there are a lot of things that should have been underlined.

The word "inclusive," for example, if we are going to be accurate and if we are going to indicate where there are changes, on line 5 the words "titles 1 to 3 inclusive" should have been underlined.

Mr. BLANDFORD. No, that was not the approach we took to this, because it would have taken quite a project to go through the niceties of that. The subcommittee—

Mr. STRATTON. I am just trying to find out what it is.

Mr. BLANDFORD. The subcommittee eliminated title I; practically the first day, they decided not to take up all of these extraneous matters and confine ourselves strictly to a retirement bill.

So what we have here, as a result of the subcommittee's desires, is a bill strictly confined to retirement. We have to change the title, and this will be introduced as a clean bill; it won't be 7216 amended; this will actually be introduced as a new bill.

Mr. STRATTON. In other words, this underlining is not intended to represent all changes?

Mr. BLANDFORD. No.

Mr. STRATTON. But just those——

Mr. BLANDFORD. Changes in the retirement features that we have agreed upon, tentatively.

Mr. WARNER. That is correct.

Mr. RIVERS. This is our working apparatus to fashion a new retirement bill, principally a retirement bill for the CIA.

Mr. BLANDFORD. That is it.

Mr. RIVERS. The reason it is so imperative, we have so many employees, with many years, who are affected, and we thought that rather than get bogged down with a lot of things that do not touch the thing that is so imperative and so important in the Agency, we would limit our deliberations to the retirement.

Mr. BENNETT. We want to pass a bill before they retire, too.

Mr. RIVERS. We hope to.

Now let's see if we can go ahead. Does that answer your question?

Mr. STRATTON. In other words—yes.

In other words, for comparison, we begin on page 10 of the printed text.

Mr. BLANDFORD. Just about. Actually you can almost take 7216 and throw it away.

Mr. RIVERS. This is just a vehicle we are going to work on here.

Mr. WARNER. Actually, Mr. Stratton, if you will recall, once the subcommittee expressed its will of not dealing with these other administrative changes we brought you a new bill at that point, and really it is from that point that we come to this one.

That second step is what we worked with before the subcommittee, in fact.

Mr. RIVERS. It may be that we may not take this entire bill that they have given us without changing one or two sentences; that is conceivable.

Mr. WARNER. We had thought it might be, sir.

Mr. RIVERS. So we may make a few changes.

But this is our vehicle we are going to work with. Where are we now?

Mr. WARNER. Page 2, line 7, the insertion of "for a limited number of employees." I think this point has been discussed already.

Beginning at line 11, through line 19, we have put in a section which, in effect, provides that the decisions or determinations of the director required under this law would not be subject to judicial review. There are several reasons for this. The principal one is security, because the very people who would be participants in this system would have engaged in service which would have many security aspects involved to it and to permit them to take their cases to court would destroy our security.

Now there is ample legislative precedent for this; we find it in the veterans' benefits sections, we even find it in the civil service system in part. So I worked with Mr. Blandford on this, and we propose it for your consideration.

Mr. HARDY. Is this the only way we can avoid the—that we can solve the problems that you want to solve?

5920

I frankly am getting more and more squeamish about giving this kind of authority to executive agencies—any executive agency.

Mr. WARNER. We searched diligently, Mr. Hardy. I don't know how else to accomplish it.

Now, Mr. Blandford, do you have any?

Mr. BLANDFORD. No. What we are going to run into, and this is what we are afraid of, you get some disgruntled employee at some future date—

Mr. RIVERS. The FBI does not have it.

Mr. BLANDFORD. The FBI does not have basically the same problems that we would have of disclosure of what this man did. Let's take a man who claims that he is entitled to be included in this because of certain work he has done, and perhaps he has done this work in the United States and perhaps he has overglorified, in his own mind, the work he has done.

It would be harmful to have this sort of thing disclosed in the newspapers, because as soon as it is filed in the complaint, that is what is going to happen.

Mr. HARDY. I appreciate the problem but, I declare, this business of giving the Director final authority makes him a little god down there—which he already is. I am not sure that we have not gone too far in that direction, not just in this case but some others.

Mr. LONG. Is there anything to prevent such a man from writing a magazine article?

Mr. BLANDFORD. Yes; we have laws that cover that, very definitely. When a man is employed by the CIA he signs a statement to that effect.

Mr. RIVERS. He understands all of this.

General CARTER. Yes.

Mr. WARNER. Yes. It is the price of working for the Agency.

Mr. BLANDFORD. They are all going into this with their eyes wide open that this is an agency that has extraordinary control over them.

Mr. Hardy's point, though, is of course one that Mr. Warner and I discussed. I know what is in Mr. Hardy's mind; that is, do you have to go this far to preserve the integrity? Actually it is the only solution I could see.

Mr. BENNETT. It is the only one I can see.

Mr. HARDY. It bothers me. Maybe there is no other solution to it. But it bothers me the amount of arbitrary authority we are giving to this Agency.

Mr. BLANDFORD. It is there, but the Director is the one who is going to decide the fate of these people anyway.

Mr. HUDDLESTON. In that instance that Mr. Blandford mentioned, the Espionage Act would prevent him from filing a suit; would it not?

Mr. BLANDFORD. I don't think so.

Mr. HUDDLESTON. Filing a suit and spelling out specifically his complaint?

Mr. BLANDFORD. He could file the suit and then he could also say that because of that he was being precluded from bringing his suit properly and ask permission of the court to give him permission to file and I don't know whether the court can handle it in confidence.

As a matter of fact, I doubt whether they could. It would become a matter of public record. You have to go through some real compli-

5921

cated legal shenanigans in order to get the evidence before the court without having it part of the public record. That is what bothered us.

Mr. WARNER. A very difficult problem.

Mr. RIVERS. Go ahead.

Mr. WARNER. Right, sir.

Page 3, beginning at line 4, this again is a provision which the subcommittee spoke to, of permitting a participant who has fulfilled 15 years of service and whose career at the time was adjudged by the Director still to be qualifying, that he may elect to remain in.

At some point in his career he knows where he is.

Mr. BLANDFORD. We ought to make it clear because Mr. Hardy would raise the point here I am sure, that this decision that this man makes to elect to be continued in this retirement system is inviolate from his viewpoint. This is not something that you then turn around to section 201 (c) and it can be set aside by the Director.

Mr. WARNER. No.

Mr. BLANDFORD. Let's make that clear in the record, that once this man has had 15 years of covered service, this is to protect the man which is what we discussed, this cannot be offset by section 201 (c).

Let's have that strictly understood.

Mr. WARNER. Yes, absolutely.

Mr. HARDY. That may be understood by us—

Mr. RIVERS. This, at that point, then, is a vested right.

Mr. BLANDFORD. Vested right. That is what you wanted and this is the way we vested it.

Mr. HARDY. This may be understood by us but I don't know where you would be if you had a conflict between these two sections, where the man contended that he was entitled to it because of his vested interest under this section.

Mr. BLANDFORD. The two would have to be read together, I think. Here we are vesting in the individual after 15 years of covered service the right to remain in it.

Mr. HARDY. Under the other section if the Director found otherwise, it might be contended that he could not go to court to have it reviewed.

Mr. BLANDFORD. I don't think so at this point because of the way this language is written. The other one is a determination and here the determination is taken from—

Mr. WARNER. It is not the Director's determination at this point, it is the individual's election.

Mr. BLANDFORD. That is right.

Mr. HARDY. Well, the only question in my mind is whether it should be spelled out that the provision of that 201 (c) is not applicable.

Mr. BLANDFORD. We could add, if you wish, "By the agency notwithstanding the provisions of section 201 (c)," if that would clarify it.

Mr. RIVERS. You could do that.

Mr. WARNER. I think we could do that.

Mr. RIVERS. Easily.

Would that be better?

Mr. HARDY. I just would like to be sure that we don't have a conflict.

Mr. RIVERS. You have to read them together.

Mr. BLANDFORD. All right; notwithstanding the provisions of section 201 (c).

5922

Mr. RIVERS. They are to be read together?

Mr. WARNER. Yes.

Mr. STRATTON. Does this mean that the question of participation is something that can then be taken to court; is that what we are saying?

Mr. RIVERS. Oh, no.

Mr. STRATTON. 201(c) refers to the fact that it is not subject to review.

Mr. BLANDFORD. He could then take to court the question of his election to continue as a participant.

Mr. RIVERS. In the system?

Mr. HARDY. That would be the only thing.

Mr. RIVERS. Yes; that would be the only thing.

Mr. BLANDFORD. This would in effect prevent the Director stopping him from electing to participate, if he elects to participate.

Mr. RIVERS. I think so.

Mr. WARNER. I would like to suggest if I might that we only agree on the principle here.

Let's look at this language. I am very concerned about adopting language very quickly, because I think Mr. Stratton has made a good point, it might conceivably be that this "notwithstanding" could apply to the "adjudged by the Director to be qualified."

This is precisely what we don't want to go into court. I see Mr. Hardy's point, that we don't want this election to revert back to the Director's discretion.

Mr. HARDY. I think you are probably—

Mr. RIVERS. Well, he is presumed to have been qualified.

Mr. HARDY. I think you probably could get better language than the reference back to 201(c).

Mr. WARNER. Yes.

Mr. HARDY. I think you probably could put in language which would say that the Director shall not abridge this right.

Mr. WARNER. That is the point I was raising. Let Mr. Blandford and me work on the language to satisfy your point.

Mr. HARDY. All right.

Mr. RIVERS. That is right. Because if he has 15 years, he is in.

Mr. WARNER. He is in, period.

Mr. RIVERS. You can work on that. What is next?

Mr. WARNER. Line 17 on the same page and line 20, we inserted the word "who". It is merely clarifying.

Mr. RIVERS. We discussed that.

Mr. BATES. I don't recall that.

Mr. RIVERS. We discussed it at length.

Mr. BATES. I remember we talked about it.

Mr. RIVERS. Can you refresh Mr. Bates, Mr. Blandford?

Mr. BLANDFORD. I am trying to think.

Mr. RIVERS. We had a long discussion about—

Mr. WARNER. Seven or eight pages, that it was not quite clear what the antecedents were.

Mr. RIVERS. Mr. Hardy got into that discussion.

Mr. HARDY. I don't remember it.

Mr. BLANDFORD. We wanted to make sure that the widow—

Mr. BATES. There is no need—

5923

Mr. BLANDFORD. I think what we had in mind was that we did not want to permit—in other words, we did not want a woman, where there wasn't a marriage, to participate and we wanted to make sure that the widow referred back to a marriage.

Mr. WARNER. Yes.

Mr. BATES. What you have done then in 15 and 16 you talked about a marriage.

Mr. BLANDFORD. But the "who" refers back to the widow.

Mr. BATES. It says "or."

Mr. BLANDFORD. "Or who." The "who" is the widow.

Mr. BATES. It still has to be a marriage which was consummated 2 years before this.

Mr. BLANDFORD. No. Because widow means the surviving wife of a participant, married to such participant for at least 2 years.

Mr. BATES. It says "such marriage," which refers back to 2 years before.

Mr. BLANDFORD. The question was without the word "who," whether the words "or is the issue by such marriage."

Mr. WARNER. Other than a wife?

Mr. BLANDFORD. The antecedent is still the participant.

Mr. BATES. I don't see any need for it at all.

Mr. BENNETT. I don't think we change anything when we put that in.

Mr. BATES. Strike the whole line.

Mr. BENNETT. Why strike the whole line?

Mr. BATES. It does not mean a thing. What does it mean?

Mr. BENNETT. What does it mean? It means—let's look at it grammatically.

"Widow" means the surviving wife of a participant who was married to such participant for at least 2 years immediately preceding his—

Mr. RIVERS. We ought to strike that out.

Mr. BENNETT. "Or is the mother"—

Mr. WARNER. "—of issue by such marriage."

In other words, in less than a 2-year period.

Mr. BENNETT. That is correct.

Mr. BATES. Wait a moment. That is my point. You talk about a marriage which precedes the death by 2 years.

Mr. LONG. But if she is a mother it could be less than 2 years.

Mr. BATES. But it says "such marriage." "Such marriage" refers back to the situation on 15 and 16, it says—

Mr. RIVERS. You fellows are getting into sentence construction now.

Mr. BATES. No.

Mr. RIVERS. I thought I left those things.

Mr. BATES. When you are talking about "such marriage" you must be referring to the marriage which was consummated 2 years before the death.

Mr. RIVERS. Mr. Blandford, you are the counsel; what is your suggestion?

Mr. BLANDFORD. I had forgotten frankly what the issue was about. But it seemed to me that the question was something dealing with whether a person could qualify here who has no relationship to being a widow.

5924

Mr. BATES. I thought I was the only one that forgot about it.

Mr. BLANDFORD. Where are the transcripts?

Mr. STRATTON. Mr. Chairman, if we want to be accurate here I am afraid that the "who" refers to participant or could be interpreted as referring to participant rather than to wife. So then you get into more trouble.

Mr. BATES. If you talk about such marriage you are talking about the marriage consummated 2 years before.

Mr. STRATTON. I think Mr. Bates is correct on that one, too.

Mr. WARNER. Maybe you have a point, Mr. Bates.

How about changing that by "marriage to the participant"?

Mr. BATES. I don't care what you change it to, as long as you don't refer to a marriage 2 years before it you don't mean that.

Mr. WARNER. "Marriage to the participant," that is your point?

Mr. BATES. Yes, do you see that?

Mr. BLANDFORD. No. "Two years immediately preceding his death or is the mother of issue by marriage to such participant," or "is the mother of issue by marriage to the participant."

Mr. WARNER. The participant.

Mr. BLANDFORD. All right.

Mr. HARDY. That I believe takes care of it.

Mr. BATES. All right, they can work it out.

Mr. RIVERS. You all work that thing out so it means what you think it means.

Mr. BLANDFORD. I think we have it now.

Mr. RIVERS. We would like to get this bill reported out some time this session.

Mr. HARDY. You have to do the same thing on line 20.

Mr. WARNER. Yes, strike it.

Now, page 6 beginning at line 12, this was a problem we discussed and the question was of the designation of a beneficiary and the subcommittee felt that the civil service provisions were a little more precise in requiring insurable interest in the beneficiary.

Mr. RIVERS. That is right; I remember that.

Mr. WARNER. Therefore we have picked up, beginning at line 12 from the Civil Service.

Mr. RIVERS. Do you remember that one?

Mr. BLANDFORD. Yes, I do remember that one.

Mr. RIVERS. All right.

What is the next one?

Mr. WARNER. Page 7, line 22. This was——

Mr. RIVERS. We have just made this consistent with the Civil Service Act.

Mr. WARNER. That is correct, sir.

We have changed the word "physical" to read "medical" so that it be abundantly clear that it would include other than purely physical examination.

Mr. LONG. How come that is not underlined in my book?

Mr. BLANDFORD. In mine either.

Mr. LONG. Just the word "medical."

Mr. WARNER. Yes.

Mr. STRATTON. Where is that, line 22 on page 7?

5925

Mr. WARNER. Twenty-two, the word "medical" is substituted for the word "physical," and in the title, too.

Mr. RIVERS. We are doing pretty well now.

Mr. WARNER. Page 12 beginning with line 16, the proviso, "voluntary retirement" shall have had not less than 5 years of service with the agency.

Now again this was discussed by the subcommittee and I believe this is consistent.

Mr. RIVERS. That is right. That is where you took these people out of industry who had these great records but he had to be there 5 years—

Mr. WARNER. That is right, sir.

Page 13, beginning at line 14, a proviso that has been added, that in order to get the benefits of section 221, the involuntary retirement, they should have not less than 5 years of qualifying service and a total of 10 years of service. This was the subcommittee's suggestion and just to make it abundantly clear we have continued on, that in the event he does not have these minimum periods of service—

Mr. RIVERS. It has to be at least a GS-13.

Mr. BLANDFORD. Let me go back, Mr. Warner, one moment to page 12.

Mr. WARNER. Yes.

Mr. BLANDFORD. Did you want to have this not less than 5 years of service with the agency or 5 years of covered service?

Mr. LONG. You are using "covered" in the same sense as "qualifying."

Mr. BLANDFORD. Qualifying service.

In other words, the type of service that this is aimed at.

Mr. WARNER. The record shows as I recall "service with the agency."

Mr. HARDY. You have already got a requirement that he have 20 years' service.

Mr. BLANDFORD. Let me give an example.

A man works in the Post Office for 15 years. He transfers to the CIA, and he serves with the CIA for 4 years and 11 months. He then goes into covered employment.

Can he then retire under this special provision because he served for a month in covered service?

And he can under that language.

Is that what you want?

Mr. HARDY. No, I don't think so.

General CARTER. If the Director qualifies him. This would be at the discretion of the Director under this language and I cannot conceive of a Director so qualifying.

Mr. BLANDFORD. My recollection is we were talking about covered service.

Mr. HOUSTON. That was in connection with the covered service. On this one, I am not saying we cannot change it, but the discussion went to 5 years' service with the Agency. I think Mr. Hardy was raising the point of someone coming over and having 1 year's service and all the rest of it in Post Office and so forth, and we put him in covered service, so we agreed to say 5 years' service with the Agency.

Mr. BLANDFORD. I would feel better for the purposes of explaining this bill to the full committee if we used the same language, pro-

5926

vided he has not less than 5 years of qualifying service, and by the word "qualifying" service, we mean of this type of service.

Mr. RIVERS. You mean service?

Mr. HARDY. I think that would improve it, actually. When you are going to retire these people on 20 years at age 50, you are going to have to have something to tie this thing down.

That is an awful young retirement age.

Mr. BATES. FBI has it now.

Mr. RIVERS. The FBI does it. They made a very compelling case on it.

Mr. HARDY. But we are talking here about people who have had most of their service in another agency.

Mr. BLANDFORD. This is qualifying service for voluntary retirement.

Now when you get to involuntary retirement for disability you are getting into a different situation.

But here it is the man's own election. I would suggest, Mr. Chairman, that we add the word "qualifying" before the word "service" on line 24 at page 12.

Mr. HARDY. I believe we should too.

Mr. RIVERS. Let's hear from General Carter.

What about that?

General CARTER. I don't see any practical objection, sir, although it is a limitation on the director's discretion. I should point out that a man is not per se qualified to be a participant here purely because he has had 5 years of this service. It might take 15 years.

Mr. RIVERS. Now these people are not—that is what I am talking about, his nerves, he would not be completely disabled. These people are not exactly like the FBI, these people take anything that comes down the pike and never disclose their identity.

We have got to be in sympathy with the CIA or we cannot get you good men.

Mr. HARDY. We are not talking about the involuntary retirement.

Mr. RIVERS. We are talking about this 5 years here.

Mr. HARDY. But we are talking about the man who voluntarily retires.

Mr. RIVERS. He may want to.

Mr. HARDY. If he is involuntarily separated he comes under these other provisions.

Mr. RIVERS. No, I am talking about 20 years, and the 5 years with the Agency.

Do you see what I am talking about? You had better explore all these possibilities.

This is the first time we have written anything like this for you, and we want to comprehend exactly what we are doing. That is what I am thinking about.

Mr. Blandford, you can straighten me out.

Mr. BLANDFORD. I see your point, Mr. Chairman, and of course I can see General Carter's point that the Director is not going to approve anybody for retirement who has only 6 months of covered service.

But I am also recalling the conversation we had here that this is going to be explained on the floor of the House to people who are

5927

going to raise questions about who are going to get these benefits and then maybe somebody is going to pose one of these questions "Would it be possible for somebody to serve for as little as 6 months and qualify?"

And the answer is "Yes."

Mr. RIVERS. We have got to be sold on this bill, I am talking about this committee, because a lot of people are skeptical of the CIA, I am telling you.

Mr. HARDY. Under the terms of this section, as it is drawn, as I read it, the Director's consent does not seem to be too important in this kind of a situation.

This is a voluntary action. Of course the thing does say "on his own application and with the consent of the Director," but I don't know what the Director's consent means in this kind of a situation.

Mr. RIVERS. Can anybody retire without the Director's consent?

Mr. BLANDFORD. It is the same as the Secretary of the Army, for 20-year retirement in the Army.

In other words, a man applies for retirement in the Army after 20 years of service and the Secretary of the Army says, "I am sorry."

Mr. RIVERS. There isn't any right.

Mr. BLANDFORD. There isn't any right.

Mr. BATES. Same on 30 years.

Mr. BLANDFORD. That is right.

Mr. BATES. First right you have is at 40 years.

Mr. RIVERS. The only man who has a right to retire is one with 40 years.

Can anybody retire without the consent of the Director, voluntarily?

Mr. BLANDFORD. Under civil service.

General CARTER. Under civil service at age 62 with 5 years of service, or at 60 with 30 years of service. I do not think the Director is in a position to override his request.

Mr. RIVERS. What about in this act?

General CARTER. Yes, sir, in this one he can.

Mr. RIVERS. He can retire?

General CARTER. The Director can override his request.

Mr. RIVERS. He must approve it.

General CARTER. Yes, sir.

Mr. BLANDFORD. No, he doesn't have to approve it, he has the discretion to approve it or not, as he sees fit.

Mr. RIVERS. That is what we are talking about.

General CARTER. Discretion.

Mr. RIVERS. He must have his consent before he can retire.

Mr. BLANDFORD. That is right.

Mr. RIVERS. So I think that we should leave it this way.

Mr. BENNETT. You say there is a practical difficulty about providing that he has not less than 5 years of service in the system, you say that is a practical difficulty.

Mr. WARNER. Yes, there would be.

Mr. BENNETT. What is that practical difficulty?

Mr. WARNER. Well, you phrased it actually a little differently than we were phrasing it before. You said 5 years in the system which is a little different than 5 years of qualifying service. Five years in

5928

the system would be definitely a problem because you might not have put him in the system.

So that would be a larger problem than even the 5 years of qualifying service.

Mr. RIVERS. I believe so.

Mr. WARNER. Now with regard to the question of 5 years of qualifying service, you may have a man who performed outstanding service under most unusual conditions but meets all criteria but happens only to have had 4 years of qualifying service or 3 years, but maybe it is really worthwhile.

So it is a question of whether you are going to limit the Director on this one.

Mr. RIVERS. I don't know that we can do that.

Mr. BLANDFORD. Of course you could have a situation in here to justify the bill as written where a man had served say, as a reserve officer for say 16 years and then was RIF'd, in a reduction in force, goes to work for CIA. Then gets into covered service for 2 years or say 4 years, is not physically disabled, but his usefulness to the CIA is practically gone and in the interest of the CIA they more or less urge him to apply for retirement.

But to give him the privilege of applying for retirement and then this man only has 4 years of qualifying service, he has a total of 20 years service, 4 years of covered service, we would at least preclude him and perhaps preclude him for the remainder of his career from applying for voluntary retirement at age 50, even though: (a) his usefulness is gone; (b) he might be in a physical condition that would not justify disability retirement but actually for the purposes for which he had been trained and employed he was of no further use to the CIA.

I can visualize that situation happening. Take, for example, the man who has come back from a place where he is not actually going to be retired for disability but he is of no further use to the CIA.

This is a situation that could work an injustice, if you require 5 years of qualifying service, because this man may never get 5 years of qualifying service, assuming the Director followed the law, the intent of the law.

Mr. HARDY. Let's leave it "service with the agency," Mr. Chairman.

Mr. BLANDFORD. All right.

Mr. RIVERS. Let's go.

Mr. BATES. How are we going to leave it?

Mr. RIVERS. Just like it is.

Mr. BENNETT. Like it is.

Mr. WARNER. The next one is on page 13, I don't think we need to go into it again, unless someone wishes to.

I have touched on that.

Mr. BLANDFORD. Let me get in the record here that this is a different situation now, where we get into the man that has less than 20 years of service. Here we are being much tougher. We are saying if you are going to retire these people, and have them draw an immediate annuity, they are going to have to have at least 5 years of covered service and 10 years of service with the Agency, so that we don't have people coming in from the outside, going to work for 2, 3, 5 years, then a year of qualifying service, and then drawing an annuity.

5929

This is the tough provision.

Mr. KILGORE. Let me raise a question back on page 12. Would it be consistent with our intent and desire of the Agency if our report makes reference to this language and said this is not intended to provide for retirement for the convenience of the person involved?

Mr. RIVERS. You could.

Mr. WARNER. You could.

Mr. BLANDFORD. We could say it, but actually it is not for the convenience of the person. Let's put it this way: I can visualize this provision being used for the convenience of the individual, but I can visualize it being used more often for the convenience of the CIA, where they tell the man that, "Look, you can retire voluntarily if you want because you are now covered under this law and you can draw an immediate annuity, or we can involuntarily separate you with a deferred annuity, which do you want?"

There is not going to be much question about what the man is going to take. So from the viewpoint of the individual I would say that there are going to be a lot of people who are going to retire voluntarily, which would presumably indicate it is for their own convenience, but in most of the cases it will be for the convenience of the CIA.

Mr. KILGORE. That is what I presumed from the discussion was its basic intent. I don't know whether there is any way to further clarify the intent of both the Agency and the committee.

Mr. WARNER. I would assume this, that with the consent of the Director, if we urgently needed this man's services we are not going to consent to his retirement. So in a sense it is mutual convenience, really.

Mr. BLANDFORD. That is really what it is, mutual convenience.

Mr. RIVERS. That is it.

Mr. KILGORE. All I was looking toward is preventing a situation from arising which is a problem to you as well as a policy problem to the Congress and that is, that provision becoming in the eyes of everybody concerned more and more of a vested right over the years, because these things do happen.

Mr. WARNER. Yes.

Mr. KILGORE. So that it amounts to a loss of personnel to you.

Mr. RIVERS. I see what you are talking about. You start your precedent and it will keep on snowballing.

Mr. WARNER. I think it reflects mutual convenience.

Mr. HUDDLESTON. Have you some better language than "to promote the efficiency of the Agency"? That sounds like a man ought to be fired rather than retired, if he is being retired to promote the efficiency of the Agency.

I wonder if we can't use some language that wouldn't be such a stigma on the man who is retired?

Mr. WARNER. Well, of course, this embraces most everything, Mr. Huddleston, reduction in overall age brackets, the hump problem, surplus skills.

Mr. BLANDFORD. Perhaps Mr. Huddleston has a very good point. Why do we need any language? Why don't we say "the Director may in his discretion retire participants in grade GS-14 and above," period?

Mr. WARNER. That is agreeable.

5930

Mr. BENNETT. That is good.

Mr. HUDDLESTON. Yes.

Mr. BLANDFORD. That would solve it.

Mr. RIVERS. No use tagging something on the fellow that he can't get loose from.

Good point, Mr. Huddleston.

Mr. HUDDLESTON. I occasionally come up with a good point.

Mr. RIVERS. Not infrequently, Mr. Huddleston, not infrequently.

Mr. BLANDFORD. I want to settle one thing. Because if you take it out above, "to promote the efficiency of the Agency," we either ought to take it out or if we leave it in we will have to explain why we left it in.

Mr. HUDDLESTON. I think it ought to come out.

Mr. RIVERS. Make it consistent.

Mr. WARNER. Both places.

Mr. BLANDFORD. That is all I want to know.

Mr. WARNER. This brings us up to where we were, Mr. Chairman, and brings us down to section 235.

Mr. RIVERS. Where is that?

Mr. WARNER. On page 15, "Mandatory Retirement Age."

Mr. RIVERS. Now, Mr. Blandford, you take over.

Mr. BLANDFORD. I think what we ought to turn to now, Mr. Chairman, is just the explanation. We all have an explanation in here.

Mr. RIVERS. Do we go back now?

Mr. BLANDFORD. Go back to the printed explanation of section 235.

Mr. RIVERS. What page is that?

General CARTER. Page 13 of tab 3.

Mr. BLANDFORD. Here is a mandatory retirement provision at age 65 to GS-18 and above, except I think this is similar to most civil service laws, that if the Director wants to continue him, he can.

Mr. WARNER. For another 5 years.

Mr. BLANDFORD. That is right. Age 60 is compulsory retirement for those below the grade of GS-18.

Mr. RIVERS. In other words, his mandatory age is 65 unless it is certificated by the Director that it is in the public interest?

Mr. WARNER. That is right. Then it can go no longer than 5 years.

Mr. BENNETT. I don't want to confuse matters, but I always wonder why we say "not to exceed 5 years." Some people are 90 and pretty able. I can see as you approach the possibility of senility that it would be a good idea to have a short term.

Mr. RIVERS. There are two reasons. It cuts down the aspirations and the hopes of the fellows down below; that you couldn't keep a man on forever, that there is always a possibility of his going in, and some time the fellow has to get out. Same way in the military.

Mr. BENNETT. That is a good argument.

Mr. RIVERS. We have a lot of people in the military. I know these fellows who are passed over at 52, there are plenty of them—

Mr. LONG. What about Congressmen and chairmen?

Mr. BENNETT. It is not identical to the military because there you can extend anybody regardless of age.

Mr. WARNER. This is more consistent with the Foreign Service. They have the same.

Mr. BLANDFORD. Actually 64 is the maximum age in the military.

Mr. BENNETT. You can call people back.

5931

Mr. BLANDFORD. You can call a retired officer back in rare instances or pass special laws for people such as General MacArthur. But by and large, you have a maximum of 64.

Mr. RIVERS. What is the next part, Mr. Blandford?

Mr. BLANDFORD. Section 241, "Disposition of Contributions and Interest in Excess of Benefits Received." This is strictly a bookkeeping operation which I don't pretend to understand.

Mr. WARNER. The essence of this is if the benefits which have been paid to the retired annuitant, to his beneficiaries, if any, do not take all the funds in his account, when the annuity ceased, then those funds in excess of contributions are refunded. This is a standard provision so that the Government doesn't make money on a man's retirement account.

Mr. BATES. They are refunded to the beneficiaries?

Mr. WARNER. That is right, and they are stated in order of precedence.

Mr. BATES. Is there any interest on that at all?

Mr. WARNER. Four percent compounded annually.

Mr. BATES. As of what date?

Mr. WARNER. As of December 31.

Mr. BATES. No. If the benefits cease and he hasn't received everything he has put in—

Mr. WARNER. If the annuities cease?

Mr. BATES. Right. Now say he died today and then the family is going to get the lump sum, when does the interest take effect?

Mr. WARNER. The interest has been running all the years that he has been making contributions.

Mr. BATES. The unpaid amount since the—

Mr. WARNER. No, all of the years that he has been making contributions the interest is computed annually and compounded.

Mr. BATES. I see.

Mr. WARNER. During the whole period since he started making contributions.

Mr. BATES. All right.

Mr. RIVERS. Are you satisfied?

Mr. BATES. Yes.

Mr. BLANDFORD. Section 251. This is the section dealing with the computation of length of service for periods of service for annuities. I assume this is just standard language?

Mr. WARNER. This is standard language, fundamentally the same as Foreign Service and civil service.

Mr. BLANDFORD. It is identical apparently with Foreign Service.

Mr. WARNER. Identical, yes.

Mr. RIVERS. Prior service same way?

Mr. WARNER. Prior service, yes.

Mr. BLANDFORD. We will get to that in a moment. They are talking about separation.

Mr. BATES. Where are you?

Mr. RIVERS. Page 17.

General CARTER. Part F on page 15 is the one we have just covered.

Mr. HARDY. Page 17 in this book.

Mr. RIVERS. He is talking about the explanation. The explanation is on 15 at tab 3.

5932

Mr. BLANDFORD. There is one thing in there that I am sure you can explain, but we ought to have it in the record.

Section 251 says that the period of service of a participant should be computed from the date he becomes a participant under the provisions of this act and he can't possibly become a participant under the provisions of this act until it becomes an act.

Then we get to the next section 252, where we count the service. Does section 252 cover, is it all-inclusive enough to provide for retro-active application of any prior service, including—and this is what I am getting at—our qualifying service requirement?

Mr. WARNER. Yes, I think it is.

Mr. BLANDFORD. Let's make it clear for the record. The point I am getting at is we want to make sure that in crediting prior service we are crediting prior service for qualifying service.

Mr. WARNER. Yes.

Mr. BLANDFORD. As distinguished from just prior service with the CIA?

Mr. WARNER. Yes.

Mr. BLANDFORD. We don't want to find these people who have already had 5 years out in the field having to wait another 5.

Is everybody convinced that this language covers this?

Mr. WARNER. I think it does.

Mr. HARDY. Tell me again how that works.

Mr. RIVERS. You had better get that straight for the record.

Mr. BLANDFORD. That is the reason I raised it.

Mr. WARNER. That is a good point.

Mr. BLANDFORD. If you are satisfied that it does that, fine. But the way section 252 reads I am not sure that it does. That is the reason I raised it.

Mr. RIVERS. I think it does.

Mr. HARDY. Where does it do it?

Mr. BLANDFORD. It doesn't specifically, that is the only thing that bothers me. I think as long as we understand what we are doing here, this is our intent.

You are talking about a participant. A participant is the only one who would qualify under this retirement system. When we talk about him, we say he may include in his period of service, certain prior service.

Now this participant may have both types of service, qualifying and nonqualifying, and I want to make sure that any prior qualifying service will count and I am not sure the language says that.

Mr. HARDY. Well, are you sure that the language doesn't say that prior service will count as qualifying?

Mr. BLANDFORD. Well, that is something else. I hadn't thought of that, that this could be interpreted to be qualifying service without it being designated as qualifying service, but certainly that is not the intent.

Mr. RIVERS. It doesn't say either of them, as a matter of fact.

Mr. BLANDFORD. That is the only thing I am raising. I just want to make sure that we get it covered.

Mr. WARNER. I see your point, Mr. Blandford. It is certainly not explicit here.

Mr. BLANDFORD. No.

Mr. WARNER. I believe it is implicit.

5933

Mr. BLANDFORD. The only thing I am trying to do is to be helpful to somebody, to the GAO or somebody, that what we mean here is that this prior service counts and this would be prior qualifying service as determined by the Director.

Mr. WARNER. Right.

Mr. RIVERS. That would be in the interpretation of the act, the intent of the Congress would be read in what he just got through saying.

Mr. BLANDFORD. Yes, this would be all that would be needed.

Mr. HARDY. Wherein would you have prior service?

Mr. BLANDFORD. Section 252.

Mr. HARDY. Wait a minute. I know that. I mean wherein would a man have prior service which would be probably determined to be qualifying service?

Mr. BLANDFORD. This is going to be completely up to the discretion of the Director as it will in the future and for the past.

Mr. HARDY. I have a little trouble seeing why we should give the Director authority to take any prior service with any other agency and say he qualifies—

Mr. BLANDFORD. No, that is not the intent. We don't mean that.

Mr. HARDY. I want to be sure.

General CARTER. Yes, sir.

Mr. WARNER. Yes.

Mr. HARDY. I don't believe you have that problem, when they are actually CIA employees.

Mr. WARNER. Yes.

Mr. HARDY. In that particular time this is the very service which is qualifying.

Mr. BLANDFORD. That is right.

Mr. RIVERS. That is exactly right.

Mr. HARDY. Then that is not a problem here.

The other side of this question though is, and I think it ought to be clear, that employment in another agency not directly under CIA should not under any circumstances be determined to be qualifying.

Mr. WARNER. Of course we had no such intent.

Mr. BATES. No.

Mr. HARDY. I think we want to be sure.

Mr. RIVERS. Not necessarily. It may, though.

Mr. BATES. No, not at all.

Mr. HARDY. It ought not to be under any circumstances.

Mr. RIVERS. What about the FBI?

Mr. WARNER. That is not qualifying service.

Mr. HARDY. He is not qualifying for this retirement system under CIA.

Mr. BLANDFORD. I would like to raise a question here on subsection (e) which deals with crediting of military service. I would like to get a good clear explanation on this.

General CARTER. Yes.

Mr. WARNER. Yes.

Mr. BLANDFORD. For practical purposes, and I think this is true of civil service and obviously true of Foreign Service, all prior military service counts for CIA service and for all other service but there could be a situation in which an officer had been retired for combat wounds and he, because he is not counting his years of service, and I presume

5934

this is the way it would be interpreted, he is not counting his years of service—this is the point I am getting at, General, and I think you will understand it better than anyone else because you are familiar with it I know—if he retires for disability and uses his percentage factor in determining his retirement pay, then you could count his years of military service toward his CIA retirement.

What happens if you have the case of a man retired for disability, using your language, it is a service-connected disability incurred in combat but it is only, say, a 20-percent disability so he uses his years of service as a multiplier, can he then get double credit for that, for retirement?

Mr. WOODYEAR. He cannot—

Mr. BLANDFORD. Let's get that.

General CARTER. Tell us what the Foreign Service Act is.

Mr. WOODYEAR. In the Foreign Service, any benefit received for military service precludes the application of that credit toward Foreign Service computation of annuity.

Mr. BLANDFORD. Do you get into any kind of a catch when it comes to longevity?

Mr. WOODYEAR. Longevity with respect to what?

Mr. BLANDFORD. We have had this come up under social security, where a person who retires for disability cannot count his years of service during World War II if those same years of service were used determining his multiplier.

Then we get into the next question that comes up, which is if they base his disability retirement on his increments of pay, and one of those increments took place during World War II, is he counting his military service for pay purposes?

Are you with me so far?

General CARTER. Yes.

Mr. BLANDFORD. Does anybody know the answer to that?

Mr. WARNER. No, I don't.

Mr. RIVERS. You are the only person I know who could answer your questions.

Mr. WARNER. The social security application is only under the Civil Service Retirement Act.

Mr. BLANDFORD. I think, I just want to make it clear what our intent is here, if I may explain what I hope our intent is.

Let me put this in the record: We do not deal here with longevity or increments of pay. They are not considered to be a part of a limitation contained in this provision. A man with prior military service may count his military service for retirement purposes under this act. A man who is drawing retirement pay on account of that length of service may not count any of his prior military service for the purposes of his retirement under the CIA, except that a man retired for combat-incurred disability who uses his percentage of disability as a multiplier may use his prior military service in computing his CIA retirement, and we do not consider that any portion of his disability retirement pay which is based upon increments in pay, which are based upon longevity, detracts from his right to count this service for CIA retirement purposes.

Mr. BENNETT. I am certainly glad you explained so well our intention.

Mr. RIVERS. I think you made that multiplier very clear.

5935

Mr. BLANDFORD. Yes.

Mr. BLANDFORD. You can get into a problem, once in a while, with this matter because somebody who is looking to dot the "i's" and cross the "t's" says, "Well, the only time you can count your military service is if you haven't used it in any way for retirement purposes."

Well, with increments in pay, which are based upon length of service, the only way you could avoid such an interpretation is to go back to the entering pay.

Are you with me on that?

Mr. RIVERS. Yes.

Mr. KILGORE. Yes.

Mr. BLANDFORD. You go to the entering pay in order to determine that.

Now I am only anticipating what somebody may raise some day in the future. I think they would be a little silly if they did, but I want to make it clear this is not our intent here.

Mr. RIVERS. All right. We are going to try to finish this today. Where are we?

Mr. BLANDFORD. 255, "Credit for service while on military leave."

Leaves of absence do not require a participant to contribute to the fund.

This is standard.

Mr. HARDY. That is all right.

Mr. RIVERS. I think General Carter is the authority on this.

Mr. BLANDFORD. Actually, General Carter is being paid by the Department of Defense, if I understand it correctly.

General CARTER. Yes, sir.

Mr. BLANDFORD. I don't believe on a reimbursable basis either.

General CARTER. No, sir. It is reimbursed to the Department of Defense by the Agency.

Mr. BLANDFORD. In other words, you are not on leave in any sense of the word?

General CARTER. No, sir.

Mr. BLANDFORD. This is a full-time assignment.

General CARTER. Yes, sir.

Mr. BLANDFORD. Now the "Estimate of appropriations needed."

This is stated language so they will know what it is going to cost. It is my understanding that this bill will cost the Government, in addition to the contribution of six and a half percent by the individual about \$500,000 a year.

Now let's also understand that if the Government increases the annuities to survivors without any further contribution, and all that sort of thing, that this will require additional appropriations.

Nothing comes free. I think we all know that the civil service retirement fund is, at this point, \$34 billion in the red.

But it is going to require annual appropriations, and I don't know where you get the appropriation from, or how you are going to handle it.

How do you handle that; do you want to say?

General CARTER. We defend our appropriations.

Mr. BLANDFORD. Do you get the appropriation for this?

General CARTER. We will.

Mr. BLANDFORD. You will have to?

General CARTER. We will get this.

5936

Mr. RIVERS. You go before the——

Mr. WARNER. Before a special committee of the Appropriations Committee, a five-man subcommittee headed by Mr. Cannon.

Mr. BLANDFORD. "Investment of moneys in the fund," is standard language.

"Attachment of moneys" is standard language.

"Retired participants reinstated or reemployed;" this is standard language as to what happens to his retirement income.

And then, of course, this requires him to make contributions.

Mr. RIVERS. "Reemployment" is standard.

"Reemployment compensation"; is that standard?

Mr. BLANDFORD. Foreign Service.

Mr. WARNER. It is standard for Foreign Service but it is not standard in the civil service.

Mr. RIVERS. It is standard for Foreign Service?

Mr. WARNER. Yes, sir.

Mr. HARDY. Does this avoid application of the dual compensation act?

Mr. WARNER. Yes, it——

Mr. BLANDFORD. Wait a minute.

Mr. WARNER. It results in a little different treatment.

Mr. RIVERS. Let me tell you how it does. If they get somebody, take General Carter——

Mr. HARDY. This bothers me a little bit here.

Mr. BLANDFORD. No, General Carter would be in an entirely different situation.

Mr. HARDY. Yes, because he is on active duty.

Mr. BLANDFORD. Take Mr. Warner. Mr. Warner retires from the CIA, and he then is appointed to another position and——

Mr. HARDY. He can draw his retired pay and active pay.

Mr. BLANDFORD. He can draw both, and this would otherwise be in violation of the 1894 dual employment statute.

Mr. HARDY. That is right.

Mr. WARNER. That is not entirely correct; you have to read 273 because the actual situation is that a reemployed officer, under this act, would be permitted to draw the salary of the position to which he is appointed and to draw so much of his annuity, if any, which would bring his total salary for the year to the last salary he held with the Agency.

Mr. HARDY. Yes; that ties it back down just exactly the way it is now.

Mr. BLANDFORD. All right.

Mr. HARDY. That is all right.

Mr. RIVERS. "Voluntary contributions."

Mr. WARNER. This is completely standard.

Mr. RIVERS. The only fellow who is going to have to do a lot of studying is the subcommittee chairman; I can tell you that. But I have Mr. Bates on my left.

Mr. WARNER. We will be glad to help you.

Mr. RIVERS. We can take care of it.

Thank you very much.

(Whereupon, at 11:59 a.m., the subcommittee was adjourned, subject to call of the Chair.)